

SAN FRANCISCO BAY CONSERVATION  
AND DEVELOPMENT COMMISSION

ENFORCEMENT COMMITTEE MEETING

BAY AREA METRO CENTER  
375 BEALE STREET  
BOARD ROOM, FIRST FLOOR  
SAN FRANCISCO, CALIFORNIA

THURSDAY, NOVEMBER 8, 2018  
12:30 P.M.

Reported by:  
Ramona Cota

A P P E A R A N C E SEnforcement Committee

Greg Scharff, Chair

Marie Gilmore

Sanjay Ranchod

Jill Techel

John Vasquez

Counsel to the Committee

David Alderson, Deputy Attorney General  
Office of the Attorney General

BCDC Staff and Consultants

Marc Zeppetello, Chief Counsel

Brad McCrea, Regulatory Director

Adrienne Klein, Chief of Enforcement

Jaidev Kalra, Legal Secretary

Tara Mueller, Deputy Attorney General  
Office of the Attorney General

Respondent/Permittee

Kevin E. Vickers, Attorney at Law  
Navi Dhillon, Attorney at Law  
Baker Botts LLP

Mark Sanders  
Westpoint Harbor, LLC

A P P E A R A N C E SPublic Speakers

Gail Raabe, Citizens Committee to Complete the Refuge

Arthur Feinstein, Citizens Committee to Complete the Refuge

David Lewis, Save the Bay

Bob Wilson, San Francisco Bay Stewardship Alliance

Kevin Parker, Friends of Westpoint Harbor

Kenneth Parker, Friends of Westpoint Harbor

Peter Blackmore, San Francisco Bay Stewardship Alliance

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12:31 p.m.

CHAIR SCHARFF: Let's call the roll.

MR. KALRA: Good afternoon, everyone. My name is Jai Kalra, I am the legal secretary. Chair Scharff?

CHAIR SCHARFF: Here.

MR. KALRA: Commissioner Ranchod?

(No response.)

MR. KALRA: Commissioner Techel?

COMMITTEE MEMBER TECHEL: Present.

MR. KALRA: Commissioner Gilmore?

COMMITTEE MEMBER GILMORE: Here.

MR. KALRA: Commissioner Vasquez?

COMMITTEE MEMBER VASQUEZ: Here.

CHAIR SCHARFF: Okay.

Do we have any public comment for items not on the agenda? It didn't seem that we did.

All right. Do we have any comment for Item 5, which is really us going into closed session?

COMMITTEE MEMBER GILMORE: Let's approve the minutes.

CHAIR SCHARFF: Oh yes, let's approve the minutes, I forgot about approving the minutes. All right, motion to approve the minutes?

COMMITTEE MEMBER GILMORE: So moved.

COMMITTEE MEMBER TECHEL: Second.

1 CHAIR SCHARFF: All in favor?

2 (Ayes.)

3 CHAIR SCHARFF: That passes unanimously.

4 Okay, then Item 5. No comments on Item 5. So then I  
5 think we are going to adjourn to closed session. And then  
6 we will be back for Item 6 afterwards.

7 (Off the record at 12:32 p.m.)

8 (Committee Member Ranchod arrived at 12:35 p.m.  
9 and joined the closed session discussion.)

10 (On the record at 1:23 p.m.)

11 CHAIR SCHARFF: So we are returning from closed  
12 session, no reportable action, so now we are on to Item 6.

13 So would you like to do the presentations and then the  
14 public comment or should we do the public comment first?  
15 What would you prefer?

16 MR. ZEPPETELLO: We would propose the presentations  
17 first followed by the public hearing.

18 CHAIR SCHARFF: Okay, let's do that. So are you going  
19 to go first?

20 MR. ZEPPETELLO: Yes. Chair Scharff, Commissioners,  
21 good afternoon. Yes, I am going to do the main  
22 presentation, probably 15, maybe 20 minutes, and then the  
23 counsel for Westpoint Harbor has informed me they probably  
24 will have a few minutes of comments as well.

25 As you know, this matter was considered by the full

1 Commission on March 15th and at that time the Commission  
2 declined to adopt the Enforcement Committee's recommendation  
3 from last November and instead remanded the matter back to  
4 this Committee for further consideration. At that hearing  
5 the Chair and two of the Commissioners made comments that  
6 staff and Westpoint Harbor might consider engaging in  
7 further discussions or mediation in an effort to try to  
8 reach a resolution.

9       So following the hearing staff approached Westpoint  
10 Harbor and they were receptive so we did initiate and then  
11 engage in a series of discussions over the next several  
12 months, what turned out to be eight months, in an effort to  
13 try to resolve issues or at least narrow issues in dispute.  
14 Commissioner Pine participated and helped facilitate some of  
15 those discussions and for that reason he will be recused  
16 from considering this matter when it comes before the full  
17 Commission but he was very helpful in promoting the dialogue  
18 between the parties.

19       The negotiations were difficult but both staff and  
20 Westpoint Harbor worked hard, both sides compromised, and we  
21 reached an agreement on two documents, first an amendment to  
22 the Westpoint Harbor permit that is referred to as Amendment  
23 Ten, and second, on a proposed settlement agreement between  
24 the Commission and Westpoint Harbor.

25       The settlement involves more than just resolution of



1 the enforcement action. As I will discuss, there were other  
2 issues that were also addressed in Amendment Ten and there  
3 are other issues that are addressed in the settlement  
4 agreement as well. It's a comprehensive settlement of  
5 disputed claims and a great many issues. It is not  
6 necessarily perfect, I think I could say that neither staff  
7 nor Westpoint are fully satisfied or happy with it, but some  
8 would say that that's a sign of a good settlement.

9 My presentation will first describe the changes to the  
10 permit made by Amendment Ten and then I will discuss the  
11 terms of the proposed agreement.

12 At the outset I will note that like all the prior  
13 amendments to the Westpoint Harbor permit, Amendment Ten has  
14 been issued by the Executive Director as a non-material  
15 amendment because it meets the criteria for a non-material  
16 amendment in the Commission's regulations. I will further  
17 discuss this issue after I review the changes made by

18 Amendment Ten in more detail because I think that will  
19 help provide the context for the Executive Director's  
20 determination that the amendment is not material.

21 But I also want to note that the proposed settlement  
22 agreement contains a provision in paragraph 16 that if the  
23 Enforcement Committee or the Commission provide comments or  
24 recommendations that the Committee believes or the  
25 commission believe should be addressed in the permit the

1 Executive Director and the staff -- the Executive Director  
2 and Westpoint Harbor will negotiate in good faith to respond  
3 to those concerns. And while I'm on it, that same paragraph  
4 of the settlement agreement states that if the Commission  
5 fails to approve the agreement the Executive Director and  
6 Westpoint Harbor will negotiate in good faith to resolve any  
7 issues and return to the Commission with a revised version  
8 of the agreement for its consideration.

9 So I am going to turn to Amendment Ten and just quickly  
10 start with this. You have seen this aerial image before  
11 that shows the site in context; Westpoint Harbor adjacent to  
12 this Pacific Shores Center, Westpoint Slough, and then to  
13 the north Greco Island and the Don Edwards San Francisco Bay  
14 National Wildlife Refuge.

15 The next image is a closer up aerial image that shows  
16 the site and immediate surroundings.

17 One of the central allegations in the Violation Report  
18 was that Westpoint Harbor had failed to make required public  
19 access areas available for a number of years after required  
20 by the permit. However, by July of 2017 Westpoint had  
21 opened all the public access areas and removed the  
22 unauthorized signs that we felt were restricting public  
23 access. As you may recall from the prior hearings,  
24 Westpoint is now inviting the public to enjoy the public  
25 access areas and amenities at the site.

1        So staff feels that it has achieved one of the primary  
2 objectives of the enforcement action and the issue of making  
3 public access is -- there was no need to actually address  
4 that directly in the agreement because that has been, that  
5 has essentially been accomplished and we are not concerned  
6 that we are going to have a regression back to what may have  
7 existed a couple of years ago.

8        There was one exception to that July 2017 date and that  
9 was the guest docks. Staff had alleged previously that  
10 those guest docks were in a dedicated public access area and  
11 needed to be open to the public. In our negotiations, as in  
12 prior negotiations with the proposed Amendment Five years  
13 ago, Westpoint expressed concerns about safety and liability  
14 of concerns about the public being on the guest docks. So  
15 in the Amendment Ten, as had been previously discussed on  
16 Amendment Five years ago, we have agreed that the guest  
17 docks may be closed and restricted access to marina tenants  
18 and guests and not available for public access by  
19 pedestrians.

20        But on the other hand, as also agreed in prior  
21 discussions, Westpoint has agreed to make public access  
22 available to the service dock here on the east side here and  
23 then there is a dock near the boat ramp. So here is the  
24 service dock here and there is the boat launch and there is  
25 a dock down here adjacent to the boat launch -- the boat

1 ramp, that will be available and made available for public  
2 access.

3 One of the other issues that was raised in the  
4 Violation Report, although it wasn't alleged as a violation,  
5 was there was concern that there were some public agency  
6 boats docked at the guest dock, a City of Redwood City  
7 police boat and fire boat. We have agreed in the Amendment  
8 Ten that those public agency boats may be docked at the  
9 guest docks without expressed authorization in the permit.

10 Another issue in the Violation Report was the boat  
11 launch, public access for kayakers to the boat launch. This  
12 wasn't alleged as a violation but as you may remember we got  
13 a complaint that a kayaker had been denied access. So we  
14 raised this issue in the settlement discussions and  
15 Westpoint expressed concerns that the boat launch was really  
16 for motorized boats coming off of trailers and that there  
17 were safety concerns with kayakers, or there would be with a  
18 conflicting use. And so the Amendment Ten provides that  
19 Westpoint may restrict the use of the boat launch ramp to  
20 motorized boats on trailers and also may charge a reasonable  
21 fee by those users for use of the boat launch ramp.

22 But as a - I won't necessarily say 'in return' - but  
23 again, as part of this discussion and negotiation there is  
24 an area here near the boat launch ramp where there was a  
25 slope failure and Westpoint has agreed to place

1 approximately 150 cubic yards of oyster shells or gravel or  
2 suitable material there to improve the beach and stabilize  
3 it. And as part of that has agreed that a 25 foot wide  
4 strip will be made available for use by the public free of  
5 charge for the launching of hand-launchable boats, paddle  
6 boats and kayaks, and that there will not be any charge for  
7 use of that for such boats.

8 Another issue raised in the Violation Report was the  
9 use of the restrooms by the public. There are a set of  
10 restrooms at the harbormaster building, which is right where  
11 the A is, and there had been concerns that those were locked  
12 and not posted for the public. As again you may remember,  
13 there were comments at the public hearing from marina  
14 tenants about safety concerns with homeless people or others  
15 that were using the restrooms inappropriately, the fact that  
16 the marina tenants also use those restrooms for showers and  
17 that there were children sometimes at night using those  
18 restrooms. So as part of the resolution of this matter  
19 we've agreed that the restrooms at the harbormaster building  
20 may be locked but that the key to the restroom will be  
21 available and there will be signage posted that the key is  
22 available in the harbormaster building so that those  
23 restrooms can be used by the public.

24 We also discussed there is a second restroom out here  
25 on the east side by the boat yard, the white square, and it

1 has been agreed and provides in Amendment Ten that that  
2 restroom will be open and unlocked during daylight hours but  
3 may be locked in the evening.

4 And this ties into another issue related to public  
5 access at the site. Again, this was not an issue that was  
6 raised as a violation but it was sort of going on behind the  
7 scenes at the time and that was because it related to the  
8 signage plan. Staff had taken the position, as is common in  
9 most sites and most permits, that the public access had to  
10 be available 24/7, at all times and Westpoint was concerned,  
11 again, about safety concerns in terms of allowing public  
12 access at night. They also pointed out that in 2003 BCDC  
13 staff had approved reasonable rules and restrictions at the  
14 adjacent Pacific Shores Center allowing Pacific Shores to be  
15 closed in the evening and only open -- the public access  
16 areas only open during the day time.

17 So in Amendment Ten we've agreed, in a manner, that the  
18 public access areas can be for a limited period of time,  
19 until December 31st, 2001 (sic), that public access will be  
20 open at this site during daylight hours only, consistent  
21 with Pacific Shores, and that after December 31st, 2021,  
22 excuse me, staff or the Commission may reevaluate the  
23 appropriateness of these restrictions and may extend or  
24 modify them. And the permit lays out a number of criteria  
25 that will be used to consider whether to modify these

1 restrictions, including whether in treating these two sites  
2 the same. Part of the argument for restricting public  
3 access is that unlike many sites around the Bay this is a  
4 relatively isolated location out at the end of a road in an  
5 industrial area and that there is not a lot of activity out  
6 here at night and as a result sometimes it's an area used by  
7 homeless folks and occasionally there have been -- there  
8 have been a lot of incidents of police reports that we also  
9 looked at in the course of our discussions.

10       So moving on, another issue or set of issues that were  
11 raised in the enforcement action were the installation and  
12 maintenance of various public access improvements including  
13 site furnishings, landscaping and a signage plan. Part of  
14 the delay and problem with that was related to getting plan  
15 approval and the loop of plan approval or the need for  
16 modifications to the plans after they were submitted. So  
17 what we did in the context of these settlement discussions  
18 is staff worked with Westpoint Harbor and we came up with a  
19 set of plans that are now attached to the permit and  
20 Westpoint has agreed to implement the improvements as shown  
21 on the plans within eight months and then to submit a set of  
22 as-builts documenting that they have implemented these  
23 requirements. So I won't spend a lot of time on this but  
24 this is an exhibit from the permit that shows the furnishing  
25 plan. Down along the bottom are pictures of the benches,

1 tables, trash receptacles, and then key to that the circles  
2 and arrows around the site show where the different  
3 improvements will be installed. So that's the site  
4 furnishing plan.

5 The next one is a landscaping plan. There is existing  
6 landscaping in areas here, like along the south side between  
7 the parking lot and the marina basin and there is some  
8 landscaping, there are some trees along the slough which  
9 I'll come back to in a second. But Westpoint has agreed to  
10 install landscaping here and along the entryway and along  
11 the south levee out to the east side of the site. There was  
12 some compromise on this one. The original permit required  
13 landscaping along the pathway here but Westpoint argued that  
14 they should be allowed to defer that landscaping because  
15 under the permit as the Phase 3 development areas are  
16 developed there may be a need to disrupt or replant and also  
17 the pathways are going to be replaced by boardwalks on the  
18 water side of the path. This plan shows what we have agreed  
19 to in terms of what Westpoint has agreed to do within the  
20 next eight months.

21 And this ties in again to another issue. One of the  
22 violations that was alleged was a failure to provide a  
23 visual barrier to the adjacent salt pond, Pond 10 down to  
24 the south. Westpoint has agreed to install landscaping  
25 along the entire length of the levee to provide a low visual



1 barrier to the adjacent salt pond, which is intended to  
2 reduce disruption to the birds that use that area.

3 Another issue that I'll raise on the landscaping plan  
4 is that you may remember we alleged as a violation that  
5 there were trees that had been planted without authorization  
6 along Westpoint Slough up in this area and we had requested  
7 in an order that those trees be removed. In the context of  
8 our discussions BCDC staff reached out to the staff of the  
9 wildlife refuge and got their views on whether those trees  
10 needed to come down because of the potential that they would  
11 serve as a perching habitat for raptors. The refuge staff  
12 consulted with their own biologist and got back to us and  
13 said that because of the distance of approximately 800 feet  
14 between the bank there and the island, Greco Island, that it  
15 was -- because of that distance and because the trees were  
16 not that tall they didn't feel it was necessary to remove  
17 those trees. So based on the guidance from the refuge staff  
18 we have withdrawn that issue and those trees are allowed --  
19 we are not pushing that -- those trees will stay.

20 And another final issue I'll mention on the landscaping  
21 plan. One of the violations concerned a fence that is along  
22 the property line with Pacific Shores here. Two years ago  
23 the fence was closed and was blocking access. Last July  
24 2017 the gate was opened so pedestrians could come in but  
25 the fence wings remained. Westpoint has agreed that if

1 Pacific Shores Center has no objection that they will remove  
2 those fenceposts. Staff was concerned that those fences  
3 served as kind of a barrier or a constricting impediment to  
4 access; and ultimately assuming Pacific Shores doesn't have  
5 a problem with it those will come down.

6 The last plan, just briefly, is the signage plan. And  
7 again, there's a whole series of signs that have been agreed  
8 to and then there's -- they are all keyed to show what is  
9 going to be installed where around the site. Again, as I  
10 mentioned, within eight months of issuance of Amendment Ten  
11 there will be an as-built set of plans showing that this  
12 work has been done.

13 The violation report alleged a number of unauthorized  
14 improvements or placement of fill at the site and I've  
15 mentioned a couple of them already, the trees and the  
16 fencing, I'll just go quickly over some of the others.

17 One was the rowers dock here at the southwest corner.  
18 There was some confusion in the permit about we authorized a  
19 change of structures from the boat house to the east side  
20 and some correction that needed to be made in the permit to  
21 recognize that. Actually the rowers dock was not part of  
22 that but as part of Amendment Ten we have authorized the  
23 rowers dock here. And as you may remember the rowers dock  
24 has been used by a tenant, 101 Surf Sports, for kayak and  
25 hand-launched boats; but 101 Surf Sports had a number of

1 containers and a portable toilet and picnic tables that were  
2 scattered around in the parking lot. As part of Amendment  
3 Ten those are going to be relocated, at least temporarily,  
4 into one of the Phase 3 development areas near the end of  
5 the rowers dock but outside of the public access areas and  
6 outside of the view corridor over here.

7 Again just quickly, the permit authorizes the utilities  
8 and other site infrastructure that is on the site, PG&E  
9 transformers, et cetera, fire hydrants. It also authorizes  
10 the existing gates and gangways at the private docks and the  
11 guest docks.

12 To address another safety concern that was expressed by  
13 the marina tenants, the permit amendment makes clear that  
14 the gates leading to the private docks and to the guest  
15 docks may be locked to prevent access by pedestrians.

16 There was an allegation about a number of floating  
17 docks with storage tents. The amendment authorizes  
18 Westpoint to use the existing docks for securing floating  
19 equipment or vessels such as boat lifts and other floats and  
20 so therefore authorizes those existing uses.

21 There was an allegation or allegations concerning there  
22 is a community garden down here along the south levee and  
23 also a storage shed that are located in a dedicated public  
24 access area but we have agreed in Amendment Ten to authorize  
25 those uses to remain. Although it is a public access area

1 it is not usable, there is no path along the levee, and now  
2 it is going to be landscaped as well. We felt this was kind  
3 of, again, a tradeoff for providing this public boat hand-  
4 launch area just immediately adjacent near the boat launch.

5       There were some allegations of unauthorized storage of  
6 construction materials, again, mostly along the levee back  
7 here. Westpoint has agreed to consolidate the storage of  
8 any construction material or unused planters or other  
9 miscellaneous material into a storage area in the boat yard.  
10 There is an asphalt pad that is out here on the east side  
11 near the pathway. Westpoint explained that that is used --  
12 it's used as a helipad but not on a regular or routine  
13 basis, it's used in conjunction with a Spartina eradication  
14 program with the Coastal Conservancy where they need to  
15 bring in materials to the site and so this permit amendment  
16 authorizes that as well.

17       Moving on. Another issue that was discussed in the  
18 Violation Report and discussed at the hearings was the  
19 signage that was required to inform the public of access  
20 restrictions to Greco Island and also the no wake zone in  
21 Westpoint Slough. On this issue we returned to the  
22 discussions in Amendment Five where these issues had been  
23 tentatively resolved by allowing - first with respect to  
24 Greco Island - that Westpoint would install signs on posts  
25 rather than a buoy system in the slough. And Westpoint had

1 submitted documentation years ago that those signs were  
2 installed, although there was some evidence submitted during  
3 the public process that the signs were no longer there or  
4 were in disrepair.

5       So the amendment authorizes the signs as opposed to  
6 buoys but also adds a provision to require Westpoint to  
7 perform visual inspections of the signs every two years and  
8 to submit a report, both to BCDC and to the refuge,  
9 regarding the conditions of the signs and any maintenance  
10 needed, with the first inspection to be by June of next  
11 year. And following the submission of the report Westpoint  
12 will coordinate with the refuge staff to perform any  
13 necessary replacement of the signs. I will add that on this  
14 one we also consulted with refuge staff about the buoys and  
15 the signs and they were comfortable with this approach and  
16 they wanted to be included in working with Westpoint Harbor  
17 to do any replacement or maintenance on the signs because of  
18 those access restrictions.

19       On the no wake zone, again, the permit originally had  
20 required buoys. We've agreed that there are a number of  
21 signs -- there are, I believe, three signs near the harbor  
22 entrance and I believe one also down near Redwood Creek that  
23 say no wake zone and channel markers in the slough to  
24 restrict boats to the center of the channel. So in brief,  
25 we've agreed that the existing signs and markers are

1 sufficient to satisfy this requirement of the permit.

2       So turning to another issue, shorebird roost habitat.  
3 There was a concern that Westpoint had failed to provide  
4 three acres of replacement shorebird roost habitat in Pond  
5 10. In its statement of defense last year Westpoint  
6 asserted that this had been met by a memorandum from  
7 Cargill, who owns the remainder of Pond 10, that they would  
8 manage levels, water levels in Pond 10 to provide equivalent  
9 habitat to the roosting habitat that had been formerly  
10 located on the part of the former bittern pond where the  
11 marina is now located.

12       At the last Enforcement Committee hearing we argued  
13 that that memorandum was insufficient and it wasn't clear  
14 that Cargill was actually complying with what they said they  
15 were going to do, so starting in April we reached out to  
16 Cargill and asked the question, 'Are you living by this  
17 memorandum and are you managing the pond at the levels for  
18 birds?' Because if so, that would go a long way to  
19 resolving this issue.

20       Cargill, the personnel at Cargill have changed over the  
21 last 15 years and they don't really have institutional  
22 memory or knowledge on this. They eventually got back to us  
23 and said that they viewed this memorandum as an expression  
24 of how they were managing Pond 10 back in 2003 but that they  
25 were unwilling to make any commitments to manage Pond 10 or

1 to enter into any kind of agreement at this point to allow  
2 Pond 10 to be managed for shorebird roost habitat.

3 In my view, Cargill has repudiated an agreement and a  
4 commitment that it made not only to Mr. Sanders but to the  
5 City of Redwood City; this memorandum was addressed to  
6 Redwood City in the context of the CEQA review back in 2003.  
7 So staff was faced with an issue of what to do about this.  
8 It seemed clear from the Commission's permit that it was  
9 always contemplated that this shorebird roost habitat would  
10 be provided south of the site in Pond 10. The findings in  
11 the permit on page 49 say the replacement habit will be  
12 created on the remaining portion of the former bittern pond  
13 lying south of the site, and later says on page 50, Cargill  
14 will have to provide additional or replacement habitat if it  
15 develops the adjacent salt pond.

16 So staff felt that at this point, 15 years later, that  
17 it would not be appropriate to require Westpoint to try to  
18 locate and purchase mitigation credit at another off-site  
19 location, both because, as I said, the permit seemed to  
20 contemplate that this is the location and that Cargill was  
21 part of this, now Cargill is changing its story, but also it  
22 seemed to us that Westpoint had reasonably relied on this  
23 memorandum from Cargill from 15 years ago. And because  
24 Cargill is not bound by the terms of the permit we have no  
25 leverage or way to force them to talk to us or talk to

1 Westpoint Harbor. The amendment provides or makes a  
2 statement that because Cargill is not bound by the permit  
3 there is no further action required of Westpoint on this  
4 issue.

5 The next issue, I think more briefly, there was a  
6 requirement to create non-tidal wetlands mitigation in the  
7 ditch back here behind the Phase 3 areas and adjacent to  
8 Pacific Shores, there is a drainage feature. Westpoint in  
9 its statement of defense provided evidence that they had  
10 prepared a wetlands mitigation plan and that they had  
11 largely implemented that plan by regrading the slope of the  
12 drainage and they also provided evidence that monitoring  
13 performed last year in 2017 showed that the wetlands  
14 mitigation exceeded the success criteria established by  
15 their plan.

16 However, issues were raised as to whether they had  
17 actually fully implemented the plan because the wetlands  
18 mitigation plan called for a pipe to be provided from the  
19 marina basin into the ditch so that water could flow into  
20 the ditch in the summer and also some flap gates that would  
21 keep the water in this stretch of the ditch to, again, keep  
22 the hydrology wet longer.

23 In the course of our discussions Westpoint provided  
24 information from the engineer that was involved in both  
25 Westpoint Harbor and Pacific Shores and there is a letter in



1 the packet from the engineer that explained that this pipe  
2 and these flap gates weren't installed in the end because it  
3 was considered that it was going to create storm water  
4 management problems for Pacific Shores and also would create  
5 problems for a pump station, a Redwood City pump station  
6 located along Seaport Boulevard.

7 The engineer also said that the drainage pipe was  
8 really unnecessary because of two reasons, one is that the  
9 tide gate from this drainage feature - I keep losing the  
10 cursor - where it meets the Bay is kind of leaky and so  
11 water comes in with the tide and keeps the area wet. And  
12 also during the summer Pacific Shores is irrigating its  
13 landscaping and the water runoff from the irrigation flows  
14 into the ditch.

15 So staff determined on this one that no further action  
16 was required on the part of Westpoint. But we did add a  
17 provision to the special condition on this to say that next  
18 year Westpoint will submit a report to staff by no later  
19 than next December summarizing observations over the summer  
20 of the ditch to document that water was in fact present in  
21 the ditch throughout this period, as the engineer says in  
22 his letter.

23 The one other issue I'll mention in terms of the  
24 Violation Report was there was an allegation of a failure to  
25 submit annual reports on live-aboard boats. Westpoint

1 Harbor has submitted these reports for the past two years  
2 and the amendment to the permit amends Special Condition  
3 II.P to provide that by January 15th of each year Westpoint  
4 will provide these reports going forward.

5       So the final issue I will discuss in relation to  
6 Amendment Ten is dredging, which is a new issue which was  
7 not related to the Violation Report or the enforcement  
8 action. But last April, prior to issuance of the Violation  
9 Report, Westpoint Harbor had submitted an amendment to  
10 authorize dredging of up to a half-million cubic yards of  
11 sediment over a 10 year period. That work would include  
12 dredging portions of the marina basin as well as dredging  
13 the marina entrance and out into the center of the slough.

14       By letter of last November BCDC staff informed  
15 Westpoint that the proposed project was not exempt from  
16 review under CEQA and that an environmental assessment would  
17 be needed. Westpoint would not agree to perform an  
18 environmental assessment and they sent us a letter in March  
19 of this year from their counsel arguing that the proposed  
20 dredging was categorically exempt from CEQA on a number of  
21 grounds. They then subsequently raised this issue in our  
22 settlement discussions as a really important issue to them  
23 to come to a comprehensive settlement. It was, again, a  
24 difficult issue. We continued to maintain, as documented in  
25 a letter and a memo we sent in June, June 1st, that this

1 project was not categorically exempt under CEQA and that an  
2 environmental assessment was necessary.

3 But ultimately we reached a resolution when Westpoint  
4 agreed to significantly agreed to reduce the scope and the  
5 duration of the project from a half-million cubic yards over  
6 10 years to 150,000 cubic yards over 2 years. Essentially  
7 the difference is they could have done -- with a 10 year  
8 authorization they could have done a complete dredging of  
9 the marina and out into the slough twice or perhaps three  
10 times, 150,000 cubic yards two or three times.

11 We've limited the project to a single episode and as  
12 part of that also required Westpoint to do some monitoring  
13 and information collection to assess conditions at Greco  
14 Island both before and after the dredging occurs. And  
15 within six months of -- the survey will go from existing  
16 information from 2006 forward and then go for three years  
17 after the dredging is completed. Within six months of  
18 completing the dredging they will submit a report prepared  
19 by a consultant jointly agreed to by BCDC staff and  
20 Westpoint that presents an analysis of the findings of this  
21 information collection and data analysis.

22 The Executive Director has determined that this limited  
23 dredging authorized by Amendment Ten and the associated  
24 information collection activities are categorically exempt  
25 from CEQA review under two categorical exemptions, one being

1 minor alterations to land and the second a categorical  
2 exemption for information gathering. The basis for this  
3 change, we don't really view it as a change in position,  
4 it's a different project than the one we were commenting on  
5 last year and even June of this year. As I said, it's  
6 substantially reduced in volume from a half-million cubic  
7 yards to 150,000 cubic yards. It's not an operation and  
8 maintenance 10 year period, it's a single dredging of the  
9 marina basin and slough over a 2 year period.

10 The CEQA exemption for minor alteration to land gives a  
11 number of examples, one example being maintenance dredging.  
12 And one of the disputes we had with Westpoint was staff did  
13 not view and still does not view this as maintenance  
14 dredging because the marina has never been dredged before.  
15 But in terms of CEQA, the maintenance dredging is only one  
16 example of a minor alteration to land and the exemption  
17 specifically says -- gives examples but not limited to. So  
18 we feel comfortable that even though -- well, it is not  
19 called maintenance dredging, it is not maintenance dredging,  
20 but it still qualifies for this exemption. Also the Class 6  
21 for information gathering applies to the surveys and  
22 analysis that will be done in conjunction with the dredging.

23 So let me return to the issue of a non-material  
24 amendment. Under the Commission's regulation Section 10822,  
25 the Executive Director shall approve a non-material

1 amendment if consistent with the Commission's laws and  
2 policies that will not result in a material alteration of  
3 the authorized project.

4       This amendment is not-material for a number of reasons.  
5 It's essentially -- if you consider -- although there is a  
6 lot of detail, what it does is it modifies certain  
7 compliance dates for certain public access improvements such  
8 as the landscaping and the visual barriers to Pond 10, it  
9 makes minor modifications to required public access  
10 improvements.

11       And as to what is newly authorized, it authorizes some  
12 small existing structures, such as the rowers dock, the  
13 community garden and a storage shed; it authorizes the  
14 relocation of some small temporary structures, particularly  
15 the 101 Surf Sports; and it authorizes the placement of 150  
16 cubic yards of fill to improve shoreline appearance over by  
17 the boat launch ramp to correct the slope failure there; and  
18 it authorizes 150,000 cubic yards of dredging.

19       The Commission's regulations at 10800(b) says an  
20 amendment is non-material if it will not materially alter a  
21 project and it gives us two examples, an amendment that  
22 would qualify under 10601 or 10602. 10601 is minor repairs  
23 or improvements that include minor fill for improving  
24 shoreline appearance and that's exactly what we have on the  
25 east side with this slope failure. And 10602(a), an

1 amendment for dredging less than 200,000 cubic yards in 10  
2 years would be a minor amendment. So we feel that this  
3 amendment clearly qualifies as a non-material amendment.

4 I will go briefly over the terms of the proposed  
5 amendment and then wind up here.

6 I would note that the proposed amendment -- sorry,  
7 agreement, the proposed agreement between the Commission and  
8 Westpoint Harbor.

9 The agreement has been signed by Westpoint Harbor, so  
10 Westpoint Harbor is committed to this agreement assuming  
11 that it is recommended by this Committee and approved by the  
12 Commission.

13 Provision one of the agreement provides for permit  
14 compliance and states that Westpoint Harbor agrees to comply  
15 in full with the permit.

16 Provision two provides that if the Commission approves  
17 the agreement the enforcement proceedings would be  
18 terminated. However, I will also add that there is a  
19 reservation of rights in paragraph 13 that provides that  
20 BCDC and the Executive Director retain the right -- reserve  
21 the right to take appropriate enforcement action in the  
22 event of any future violation of the permit or the McAteer-  
23 Petris Act occurring after the effective date. So the  
24 enforcement proceedings would be terminated but if Westpoint  
25 fails to comply with Amendment Ten in the future we retain

1 full -- the Commission retains full authority to enforce.

2 As I mentioned at the outset, this agreement  
3 encompasses more than the enforcement action and one of the  
4 aspects of that is that it resolves some Public Records Act  
5 disputes between Westpoint Harbor and the Commission. As  
6 you may remember, in August of last year, 2016 -- '17 --  
7 Westpoint Harbor served a Public Records Act request on the  
8 Commission for documents related to the enforcement action.  
9 BCDC responded and provided a large number of electronic and  
10 paper documents. We feel that the response was fully  
11 compliant with the Public Records Act. Westpoint disagreed,  
12 they sued the Commission and that litigation remains pending  
13 in San Francisco Superior Court. Even though we believe  
14 staff properly complied with its obligations under the  
15 Public Records Act the Commission does have some potential  
16 liability here for attorney's fees if Westpoint Harbor were  
17 to prevail in that litigation.

18 And then in August of this year Westpoint made another  
19 Public Records Act request that consisted actually of 15  
20 separate requests. Staff has met and conferred with  
21 Westpoint Harbor's counsel on this to clarify and attempt to  
22 narrow the request but it is clear that in any case it will  
23 be very burdensome to respond and that there is the  
24 potential for litigation and potential liability associated  
25 with that -- those requests, if they end up in litigation.

1        So the agreement provides that if the agreement is  
2 approved by the Commission Westpoint Harbor will dismiss the  
3 Public Records Act litigation against the Commission and  
4 that no further response will be required to the 2018, the  
5 August 2018 Public Records Act requests.

6        The agreement also provides mutual releases by both the  
7 Commission and Westpoint Harbor of any claims or potential  
8 claims against each other prior to the effective date of the  
9 agreement.

10       Finally I'll turn to the issue of the payments that are  
11 provided for in the agreement. The Enforcement Committee  
12 last November had adopted the Executive Director's  
13 recommended decision which included a proposed penalty of  
14 \$513,000. The Enforcement Committee allowed in its  
15 modification of that recommendation for the possibility of a  
16 50 percent waiver if there was full compliance.

17       As discussed in the staff report, in the context of our  
18 settlement negotiations staff acknowledged that it was  
19 appropriate to compromise on the amount of the payment for a  
20 number of reasons: In some cases we had agreed that no  
21 further action was required with respect to certain  
22 violations, in other cases we agreed that it would be  
23 appropriate to withdraw or reduce any proposed payment  
24 because we had reached a compromise or negotiated a  
25 resolution that was mutually acceptable. And then there was



1 the factor that Westpoint argued that there was liability on  
2 the part -- or potential liability on the part of the  
3 Commission with respect to the Public Records Act litigation  
4 and claims that they urged us to take into account as a  
5 counterbalance to the staff's position with respect to the  
6 violations.

7       So ultimately we agreed the proposed agreement would  
8 require two payments by Westpoint Harbor in the total amount  
9 of \$150,000. The first payment would be to the Bay Fill  
10 Cleanup Fund with the provision that within 30 days BCDC  
11 would transfer that payment to the California Coastal  
12 Conservancy to be used however the Conservancy desires for  
13 projects; we did talk about a number of projects in the  
14 South Bay that might be appropriate for those funds. And  
15 the second payment would be \$75,000 to the Marine Science  
16 Institute, which is a nonprofit educational organization in  
17 Redwood City.

18       I will note that this is different from the payments  
19 that are typical in resolving an enforcement proceeding in  
20 that the payments are not a penalty. They are not a penalty  
21 for a couple of reasons: One is that if the Commission  
22 approves this agreement the enforcement action would be  
23 terminated; and second, this is a settlement of a number of  
24 issues with no admission of liability on the part of  
25 Westpoint Harbor.

1        Providing for payments rather than imposing a penalty  
2 is unusual, it is not our common practice, but it is not  
3 unprecedented. In 2012 the Commission entered into a  
4 settlement agreement to resolve an enforcement action with  
5 an entity called Ford Point LLC and the City of Richmond and  
6 that settlement required the payment of a contribution to  
7 the San Francisco Bay Trail Project. So again, this is  
8 somewhat different but it is not unprecedented and it is  
9 within the scope, we think, of the Commission's authority in  
10 the context of a comprehensive settlement agreement.

11        So to summarize, this is a comprehensive settlement of  
12 a lot of issues, including but not limited to those raised  
13 in the enforcement action, and the staff recommends that the  
14 Enforcement Committee recommend to the full Commission that  
15 the Commission approve the proposed agreement between the  
16 Commission and Westpoint Harbor. I'm happy to answer any  
17 questions either now or after the presentation by Westpoint  
18 Harbor or after the public hearing. Thank you.

19        CHAIR SCHARFF: Thank you.

20        Now does counsel for Westpoint Harbor wish to address  
21 the Committee?

22        MR. VICKERS: Thank you, Commissioners. My name is  
23 Kevin Vickers, I'm here with Navi Dhillon, my colleague,  
24 representing Westpoint Harbor.

25        Preliminary matter, I want to thank Marc Zeppetello and

1 Brad McCrea for all the work they put in over the last  
2 several months. There were many long meetings and they  
3 demonstrated a tremendous level of professionalism.

4 I have a few high level points and then if Navi wants  
5 to say anything he's welcome to, obviously, and we'll  
6 respond to any questions that you have.

7 High level points, the first one: It took a lot of  
8 work to get here. It took a lot of work because the history  
9 is long, the permit is complex, the facts are detailed,  
10 digging into them was not easy. Despite that we did get  
11 here.

12 Relates to the second issue, the second point: The  
13 allegations remain hotly contested. Westpoint Harbor does  
14 not agree with a lot of the things that, a lot of the  
15 characterizations that were just made. That said, a lot of  
16 compromise, there is a concession to the shortness of life  
17 here, and the agreement reflects that compromise.

18 Third and final point I have: If the Commission  
19 ultimately approves this agreement it will be in the public  
20 interest. It will be in the public interest for multiple  
21 reasons, but not least of which is that it will free up  
22 resources, staff and Westpoint Harbor, to focus on important  
23 goals. I think as you just heard, the on the ground reality  
24 at Westpoint Harbor today is undoubtedly great. It's a  
25 beautiful place, public access is substantial, protections

1 for the environment are substantial.

2 That's it. I urge you to support the agreement.

3 Again, I can answer any questions. Navi, if you have any  
4 comments you're welcome to make them, obviously.

5 MR. DHILLON: Sure. I'll be very brief. We've heard a  
6 lot of detail from Mr. Zeppetello and I echo Kevin's  
7 comments and want to thank Brad and Marc for their work the  
8 last few months. It's been tough but we're here.

9 But I think it would be helpful for you all to maybe  
10 zoom out for a moment. There has been a lot of finger-  
11 pointing about a great number of things. And we can  
12 disagree about these allegations but there is one point I  
13 think we can all agree upon, that Westpoint Harbor is a  
14 tremendous facility, it's a great benefit to the Bay, and  
15 this provides us an opportunity to push the reset button.  
16 That it's been seven, eight, nine, ten years where we've  
17 been fighting, spending public resources, private resources,  
18 and the support of you all to say, let's put an end to this  
19 so we can turn the page to a new chapter and help Westpoint  
20 Harbor become even a greater resource and to have more  
21 public facilities I think is in the best interest of  
22 everyone in this room.

23 So I would encourage you all in considering this  
24 proposal to really focus on that and not lose sight of the  
25 bigger picture here and we're happy to answer any questions

1 you guys may have.

2 CHAIR SCHARFF: Thank you very much. Does the  
3 Committee have any questions for the gentlemen?

4 COMMITTEE MEMBER TECHEL: Why don't we hear the public?

5 CHAIR SCHARFF: Okay. Let's move on to the public. We  
6 have a number of speakers, everyone will get three minutes.

7 Our first speaker is Cort Larned, to be followed by  
8 Gail Raabe. Is Cort here?

9 SPEAKER FROM THE AUDIENCE: Cort had to leave.

10 CHAIR SCHARFF: All right, seeing no Cort, is Gail  
11 Raabe here? Come on up, Gail, to be followed by Arthur  
12 Feinstein.

13 MS. RAABE: This is it, presentation, right? Right  
14 here?

15 CHAIR SCHARFF: Yes.

16 MS. RAABE: Okay.

17 CHAIR SCHARFF: Three minutes.

18 MS. RAABE: I want to make sure I'm on the right side  
19 here, okay. Chair Scharff and Committee Members, I'm Gail  
20 Raabe with the Citizens Committee to Complete the Refuge.

21 Our correspondence to your committee outlines our  
22 serious concerns related to the recommended enforcement  
23 decision and settlement agreement for Westpoint Harbor.

24 Amendment Ten to the Westpoint Harbor permit makes  
25 significant changes to the original special conditions. If

1 these changes stand it will result in a loss of protections  
2 for Bay habitats and wildlife and so we urge you to not  
3 approve the proposed enforcement decision without some  
4 modifications.

5 Permit Amendment Ten relieves Westpoint Harbor's  
6 obligation to implement a key provision of Special Condition  
7 H to identify Westpoint Slough as a no wake zone. BCDC has  
8 provided no documentation that signage is in place at the  
9 entrance to Westpoint Slough near the confluence with  
10 Redwood Creek that would alert boaters to reduce their  
11 speed. And in fact, there is no signage in that area and it  
12 would be very easy for all of you, anyone, to go out there  
13 and verify that fact. And yet new permit language is  
14 asserting that Westpoint Harbor's placement of three signs  
15 at the marina basin entrance satisfies the requirement to  
16 identify Westpoint Channel as a no wake zone.

17 Citizens is concerned that boats traveling at high  
18 speeds near the shoreline of the National Wildlife Refuge at  
19 Greco Island, unaware of the no wake zone, will cause  
20 significant erosion damage to Westpoint Slough mud flats and  
21 endangered species' tidal marsh habitat.

22 This requirement to identify Westpoint Slough as a no  
23 wake zone was included in the Redwood City Mitigated  
24 Negative Declaration for the project at the request of US  
25 Fish and Wildlife Service.

1       Agency staff did add new language in both the  
2   Authorization and Findings sections stating that the  
3   permittee will, quote:

4                "Install, use, and maintain no wake zone  
5       markers at the channel entrance to Westpoint  
6       Slough in cooperation with the Port of Redwood  
7       City ..."

8       However, this wording is conspicuously absent from the  
9   special conditions section, which according to BCDC policy  
10  makes this requirement unenforceable going forward.  These  
11  glaring inconsistencies in Amendment Ten effectively  
12  eliminate this protection for sensitive habitats and should  
13  be rectified.

14       A number of proposed changes in the settlement  
15  agreement show a blatant disregard on the part of BCDC to  
16  uphold the agency's legislative mandate to protect Bay  
17  natural resources.  This permit amendment establishes a  
18  terrible precedent, jeopardizing the public's trust in  
19  BCDC's willingness to enforce any permit conditions.  BCDC's  
20  permit backsliding is inconsistent with original Westpoint  
21  Harbor permit findings that, quote:

22               "... the project ... Special Conditions  
23       ensure the protection of surrounding valuable  
24       habitat and require mitigation for any impacts to  
25       wildlife or habitat at the project site."

1 Thank you.

2 CHAIR SCHARFF: Thank you.

3 Our next speaker is Arthur Feinstein, to be followed by  
4 David Lewis.

5 MR. FEINSTEIN: Hi. My name is Arthur Feinstein, on  
6 the board of the Citizens Committee; I am also the Chair of  
7 the State Conservation Committee of the Sierra Club. I am  
8 not speaking for the Club at the moment but I'm sure that  
9 they would support everything I say if we have to go forward  
10 and continue challenging you and stuff.

11 So I am hoping you hear that this is really sad. I  
12 have been going to BCDC since the mid-'90s probably, and we  
13 have always looked at BCDC as the backstop to make sure that  
14 this Bay is preserved for its wildlife resources as well as  
15 the other purposes. And this is the first time I've seen  
16 BCDC actually say, we don't care about wildlife, we don't  
17 care about endangered species. Public access, yeah. We  
18 don't want to be sued, let's settle. It's embarrassing and  
19 it's shameful. So I hope you take it seriously and think  
20 about the impacts we're talking about.

21 The shorebird pond had thousands of shorebirds when it  
22 was studied back in 2001. Shorebirds are being threatened  
23 all around the world now for lack of habitats. It's not a  
24 small thing. The Ridgway rail at Greco Island, a well-  
25 known -- it used to be clapper rail in case you don't know



1 what we're talking about. It's an endangered species unique  
2 here, its numbers are tenuous at best.

3 Rapid wave action on the tidal marshes erode the tidal  
4 marshes, that's well-known. Ferries disturb birds, that's  
5 well-known, it's been documented by the ferry task force way  
6 back when before WETA was developed. The impacts are  
7 serious and significant and this project and the permit  
8 recognized those impacts and said, let's do something about  
9 it. And now you're saying, eh, we don't really care, right.

10 The shorebird ponds. Well, you know, Cargill -- a  
11 memo, not a contract, not signed by somebody in a position  
12 to authorize it. You should have found that out at BCDC at  
13 the very least. So now Cargill says, we're not responsible.  
14 We have fought Cargill for years at the Citizens Committee  
15 but here we are saying, holy crow, Cargill has a point.  
16 They were never actually committed. You guys did not follow  
17 through in your permit obligations to make sure that this  
18 land was protected for the shorebirds and now you're just  
19 kissing it off. It's staggering.

20 The signage. Gail didn't mention it but, you know,  
21 Baykeeper went by, took photos. There is no sign at the  
22 mouth of Westpoint Slough. How are you possibly accepting  
23 this when there is no sign and you're saying, signage has  
24 been done, it's okay, we're cashing out our permit  
25 requirements. It's amazing. You should all be embarrassed.

1        So we're hoping that you'll look at these issues and  
2        say, well wait a minute, we do have a responsibility. You  
3        took this seat for a reason. I do hope that you understand  
4        what that reason is and that you'll actually follow it and  
5        protect our resources. Thanks.

6        CHAIR SCHARFF: Thank you.

7        David Lewis, to be followed by Bob Wilson.

8        MR. LEWIS: Thank you, Mr. Chairman, David Lewis,  
9        executive director of Save the Bay.

10       My ongoing concern in multiple appearances before the  
11       Enforcement Committee, especially in the last few years, has  
12       been to enhance BCDC's credibility and the credibility of  
13       all of the permits that you issue so that enforcement is  
14       taken seriously and so that there is not a need to do  
15       enforcement because permit holders know that they are going  
16       to be held to the permits.

17       This is a difficult set of things for me to say because  
18       I respect the staff's professionalism and patience under  
19       very difficult circumstances against a serial violator of a  
20       permit with deep pockets and political connections who has  
21       thrown everything possible at the Commission in what can  
22       only be seen as bullying behavior. But this process at this  
23       particular point, and how this is being brought back to you  
24       almost with a gun to your head, really makes a mockery of  
25       the enforcement process and so I think you need to reject it

1 at this stage.

2       Instead of doing what the permit requires, which the  
3 permit holder could easily have done for a fraction of the  
4 resources that he has spent on attorneys and a fraction of  
5 the time that he has taken up of the Commission's, instead  
6 of that he has not only thrown Public Records Act and  
7 harassing behavior and lawsuits but also gone and initiated  
8 an audit of BCDC, all because he is an aggrieved party.

9       So let me be clear, negotiation to settle an issue like  
10 this behind closed doors is okay, but implementing aspects  
11 of the settlement before the Commission or the public has  
12 had a chance to review it, before the Enforcement Committee  
13 has even had a hearing, that is not okay. Amending a permit  
14 to eliminate crucial requirements without public notice or a  
15 hearing is not okay. Authorizing dredging of this scope  
16 without environmental review and a public hearing on that,  
17 if it's going to be waived, that is not okay.

18       Even if Amendment Ten technically qualifies under the  
19 Commission's regulations as non-material or minor, these  
20 changes are being made under duress as part of an  
21 enforcement proceeding. What do you think the appearance is  
22 to the public of vitiating the guts of the permit before  
23 anybody has a chance to see it other than the Executive  
24 Director of the Commission and give it scrutiny and make the  
25 observations that the previous speakers have about details

1 of that permit and of the amendment?

2 So I encourage you not to submit to a violator who has  
3 decided he can out-lawyer the State of California, that's  
4 not okay. These are terrible precedents and especially the  
5 process that is being used at this stage is a terrible  
6 precedent that damages the Commission's credibility with the  
7 public. Thank you.

8 CHAIR SCHARFF: Thank you.

9 Bob Wilson, to be followed by Kevin Parker.

10 MR. WILSON: Thank you. I'm Bob Wilson, co-founder of  
11 the San Francisco Bay Stewardship Alliance. The Alliance  
12 promotes informed conservation and responsible development  
13 of the San Francisco Bay shoreline for the enjoyment of all  
14 today and for future generations.

15 While the Alliance has major concerns about the BCDC  
16 governance and its practices and we are troubled by BCDC's  
17 list of possible or pending enforcement actions that  
18 according to Executive Director Goldzband's testimony  
19 numbers apparently over 200 entities, we would like to speak  
20 today just about Westpoint Harbor, not about those other  
21 potential actions and our efforts to help reform the BCDC  
22 are and will be ongoing.

23 The topic today is the longstanding enforcement  
24 activities at Westpoint Harbor. I want to thank first the  
25 Friends of Westpoint Harbor and the over 5,000 people who

1 signed the petition calling for an end to the BCDC shakedown  
2 of Westpoint Harbor. We also want to thank the Legislature  
3 because it was the Legislature that brought the audit of the  
4 BCDC practices, it's long overdue.

5 Our Alliance supports the settlement agreement between  
6 Westpoint Harbor and the BCDC. Our press release  
7 recommending approval was posted on November 5th and sent  
8 via email to the Commission, I have hard copy if you need  
9 it. This dispute has dragged on for far, far too long. It  
10 has cost an immense amount of funds, an incredible amount of  
11 time and all of this has been needlessly wasted by both  
12 private and public resources. It is not in the public's  
13 interest to continue the dispute nor to ask for further  
14 delay, and even more wasted resources by making any  
15 modifications to this agreement.

16 I commend both sides who have worked in good faith  
17 since the last enforcement meeting, I think Mr. Zeppetello  
18 said eight months ago, to find an equitable resolution, it  
19 was a hard road. The proposed contributions to the  
20 nonprofits in the agreement is a creative way to ensure that  
21 both the environment and the community benefit directly from  
22 the settlement beyond the improvements that have been made  
23 as a result of the Westpoint Harbor project.

24 So we urge you from our organization that it is time to  
25 move forward and for both sides, both sides, to focus on

1 continuing to improve San Francisco Bay and the estuary and  
2 the public's access to enjoy it for generations to come.  
3 Our Alliance urges you to approve the settlement without  
4 further delay. Thank you.

5 CHAIR SCHARFF: Thank you.

6 Kevin Parker, to be followed by Kenneth Parker.

7 MR. KEVIN PARKER: Good afternoon. I have some  
8 prepared remarks and I'd just like to respond to some of the  
9 comments that have been made thus far.

10 The comment about the no wake zone is actually  
11 factually incorrect. We live in a post-truth world and  
12 unfortunately it is all of our responsibilities as citizens  
13 to correct factual errors. There is a no wake marker in the  
14 slough. It's actually visible from space. I went to Google  
15 Earth last night and can show you a picture of it.

16 The second piece of misinformation was that this  
17 amendment has been done in secret and has not been public.  
18 It has been in the public domain for more than two weeks.

19 So I hope that those correct the record. So now to my  
20 prepared remarks.

21 This morning very early I was up at Westpoint Harbor  
22 picking up my computer, it was beautiful. Even at sunrise  
23 there were folk walking on the amazing Bay Trail that  
24 Westpoint Harbor has put together. I counted 6 people on  
25 the trail this morning at 6:30. At lunchtime yesterday

1 there were more than 20 people on the trail picnicking,  
2 having their lunches. And that is not any of the regular  
3 harbor use, these are people who make a beeline for the  
4 harbor because they want to enjoy the vista of the Bay and  
5 the recreation that's available at the harbor. I met a  
6 couple at the weekend who told me that this was their  
7 favorite spot for what they call their morning coffee  
8 stroll. They discovered Westpoint Harbor by mistake, they  
9 were actually looking for the Redwood City Marina, and now  
10 come every Saturday.

11 In the McAteer-Petris Act it says, and this is Section 12  
66605.1:

13           "The Legislature finds that in order to make  
14 San Francisco Bay more accessible for the use and  
15 enjoyment of people, the bay shoreline should be  
16 improved, developed and preserved. The  
17 Legislature further recognizes that private  
18 investment in shoreline development should be  
19 vigorously encouraged and may be one of the  
20 principal means of achieving bay shoreline  
21 development, minimizing the resort to taxpayer  
22 funds; therefore, the Legislature declares that  
23 the commission should encourage both public and  
24 private development of the bay shoreline."  
25 This agreement is a very long journey for us to get

1 back to the Commission's original mission. I am happy to  
2 see that common sense has prevailed.

3 To me it is just admirable that a man like Mark Sanders  
4 would want to donate \$150,000 to the Coastal Conservancy and  
5 to the Marine Science Institute, it is just his very nature  
6 to be a supporter of these extremely important local  
7 charities.

8 So let us all get back to our jobs. Commissioners,  
9 please continue to improve, develop and preserve our bay and  
10 Westpoint will continue to provide access to the public for  
11 one of the most amazing facilities within 3,000 miles. It  
12 is the envy of municipalities across North America. Thank  
13 you.

14 CHAIR SCHARFF: Thank you.

15 Kenneth Parker, to be followed by Peter Blackmore.

16 MR. KENNETH PARKER: Thank you. And we sound nothing  
17 alike. (Laughter.)

18 So I am here speaking as a friend of Westpoint Harbor.  
19 But as someone who has had the opportunity to observe some  
20 of this project more or less over the last year one thing  
21 that I think really needs to be acknowledged, last March in  
22 the full Commission meeting essentially the full Commission  
23 charged this Committee and the staff and Westpoint Harbor  
24 with the task of, come back together, work together, find a  
25 solution. I think it is commendable how hard BCDC staff,



1 this Committee and Westpoint have worked so hard to come up  
2 with what seems to me at least to be a very equitable  
3 solution to a longstanding conflict. I really am deeply  
4 grateful as a citizen that these people have done this work,  
5 it's an amazing thing.

6 Westpoint Harbor is an asset to the community, it is an  
7 asset to the Bay, it is a standard setter for how to be an  
8 environmentally conscious marina in the world today. Mark  
9 Sanders has done an incredible job there.

10 Now that they have worked together and found a  
11 solution, found something that works for everyone, addresses  
12 the issue and establishes this going forward, I think it's  
13 time to acknowledge that, to recognize that, and I sincerely  
14 hope that this entire committee will support the efforts of  
15 your staff and of Westpoint Harbor in finding this solution  
16 and recognize the excellent work that they have done to  
17 achieve this.

18 With that I'd also like -- this past Tuesday reminds  
19 all of us that our government works because people like you  
20 step forward and take on the responsibilities and I would  
21 like to thank all of you for doing that. Because it's not  
22 an easy task, it's not your usual job, and yet you step  
23 forward and do this. So as a citizen, as a voter I'd like  
24 to say thank you.

25 CHAIR SCHARFF: Thank you.

1 All right, I think that brings us to -- I don't have a  
2 card for you but feel free to speak.

3 MR. BLACKMORE: Peter Blackmore.

4 CHAIR SCHARFF: Oh, Peter Blackmore, thank you.

5 MR. BLACKMORE: Chairman and Commissioners of the  
6 Enforcement Committee and staff of BCDC, good afternoon. My  
7 name is Peter Blackmore, I am one of the co-founders of the  
8 San Francisco Bay Stewardship Alliance, an organization  
9 which was established to promote the Bay environment.

10 As the Commissioners know, the Alliance has a number of  
11 issues with the BCDC. However, our focus today is on the  
12 proposed settlement agreement. We encourage the Enforcement  
13 Committee to support that agreement for two reasons.

14 First, Westpoint Harbor is undoubtedly a model. It  
15 stands apart from almost every other marina in the United  
16 States as an example of what can be done with the right  
17 development. It is used as a model.

18 It also is passionate about the environment. It tests  
19 the water many times a month. The water in the harbor is  
20 cleaner than the water in the Bay. Why? Because you have  
21 pump-outs facilitated at every other slip. You also have  
22 people who are diligent about how to regulate and manage the  
23 whole environment, so it is a credit to everyone. As a  
24 result the marina is full of fish and the surrounding area  
25 is full of wildlife. I encourage anybody to go and inspect

1 for themselves.

2 I go further to say if people write or verbally  
3 complain about the lack of environmental standards at the  
4 marina simply go and visit. Because without that simple due  
5 diligence you are not doing your duty and frankly your  
6 comments should be discounted.

7 I would also like to confirm that the no wake system is  
8 out there. It is also going to be upgraded and with the  
9 support of Redwood City new buoys are going to be put in so  
10 please discount that comment from a previous speaker.

11 The second is these settlement discussions have gone on  
12 for many, many months, as everybody is aware, and the  
13 agreement has been signed in good faith after a lot of hard  
14 work by both sides. It reminds the Alliance of the Buckler  
15 Island issue and dispute, which also cost millions of  
16 dollars and countless hours and eventually a judge agreed  
17 with Buckler Island against the BCDC.

18 The Alliance view a failure to come to a decision after  
19 hundreds of hours and millions of dollars spent both by the  
20 Westpoint Harbor and by the BCDC, which in this case is  
21 taxpayers' money, that would be a travesty which the  
22 Alliance would challenge vigorously. Thank you for your  
23 time.

24 CHAIR SCHARFF: Thank you.

25 Now we return to the Commission for comments, et

1 cetera.

2 COMMITTEE MEMBER VASQUEZ: If I could?

3 CHAIR SCHARFF: Sure, John.

4 COMMITTEE MEMBER VASQUEZ: I think the second to the  
5 last speaker said it. We as the Commission, I wasn't a  
6 member of the Enforcement Committee then, we did charge the  
7 Enforcement Committee to go back and to work very hard and I  
8 think this is exactly the result of all that hard work, to  
9 come to a compromise. And compromises are that,  
10 compromises. I think our counsel said it best, it is not  
11 perfect nor should it be perfect, there is always room for  
12 improvement on either side. And you will be criticized. We  
13 have been.

14 As some of the speakers spoke about our willingness to  
15 save the environment. But again, this is an environment  
16 that humans have impacted since humans have been alive. The  
17 needs and the things that we want to have as a community --  
18 and again, our charge is conservation and development, those  
19 are sometimes against each other and come to the head.

20 But I think the work that has been done on this is a  
21 good example of when people can sit down and begin to put  
22 the weapons aside and say, how do we make this work and how  
23 do we continue to move forward, and I want to thank both the  
24 Applicant and our staff for working over the last seven  
25 months to come to this resolution, hopefully.

1 CHAIR SCHARFF: All right. Commissioner Gilmore.

2 COMMITTEE MEMBER GILMORE: I want to echo the comments  
3 of thanking both Westpoint Harbor and staff for working so  
4 diligently on issues that I know could not have been easy.

5 I wanted to ask for some clarification because this  
6 seems like this would be kind of easy to clarify. The first  
7 question I have is about the signage. Number one, is it  
8 there, and if it's not are they intending to improve it?

9 And secondly, there was some comment about the buoys.  
10 I heard two different things, I heard that there was one  
11 buoy and then I heard something about working with the Port  
12 or the City of Redwood City to upgrade the buoys. So if I  
13 could get clarification on those points I'd appreciate it.

14 MR. McCREA: Kevin, let me just briefly say we have  
15 determined that the signage and the habitat protections are  
16 in place; Kevin can probably give you a much more detailed  
17 accounting of the signage. And also it is our understanding  
18 that there are lease agreements between the marina operator,  
19 Mr. Sanders, and the marina tenants themselves to ensure  
20 that wakes are prevented. Kevin.

21 MR. VICKERS: This relates to a point I had which is,  
22 there was a lot of hard work done to get to reality.  
23 Frankly, I am going to venture a statement of opinion here  
24 and say that I have done more than maybe anyone else so I  
25 know a lot about the details here.

1           With respect to the wake signs, there are currently  
2 three no wake signs in place at the entrance to the marina  
3 itself where boats transfer from the marina to Westpoint  
4 Slough. There is an additional sign mounted on a buoy at  
5 the confluence of Redwood Creek and Westpoint Slough. So if  
6 you're a boat coming in to Westpoint Slough from Redwood  
7 Creek you pass that buoy. If you're a boat leaving  
8 Westpoint Harbor going into Westpoint Slough you pass those  
9 signs.

10           In addition to that there is a sign located at the boat  
11 launch ramp at Westpoint Harbor that very clearly specifies  
12 that Westpoint Slough is a no wake zone and that Greco  
13 Island is a sensitive area that should be avoided.

14           In addition to that there are six buoys in Westpoint  
15 Slough that are channel markers for navigation purposes.  
16 Those buoys are located such that boats following the  
17 navigable channel stay quite a distance from the Greco  
18 Island area and much closer to the Pacific Shores Center and  
19 Westpoint Harbor side of the slough.

20           In addition to that, as Brad referenced, Westpoint  
21 Harbor has contractual obligations with all of its tenants  
22 that have rules that say, you have to follow the Westpoint  
23 Harbor rules. The Westpoint Harbor rules very clearly say,  
24 Westpoint Slough is a no wake zone. If you violate the  
25 rules you can lose your right to be a tenant at Westpoint

1 Harbor. In combination those protections, frankly I don't  
2 know how a boater could not realize that Westpoint Slough is  
3 a no wake zone.

4 COMMITTEE MEMBER GILMORE: Thank you.

5 CHAIR SCHARFF: Go ahead, Commissioner Ranchod.

6 COMMITTEE MEMBER RANCHOD: I would echo the comments of  
7 my fellow committee members about appreciating the hard work  
8 that has been done by everybody to get to this point and  
9 resolve so many of the outstanding issues. It is complex  
10 and many of these issues do go back in time so I appreciate  
11 how difficult it has been to get to this point and try to  
12 resolve so many aspects of this.

13 I would like to ask staff to respond to the comments  
14 and concerns that have been raised in the letters and in the  
15 comments from a couple of the speakers about the  
16 environmental mitigation and natural resource mitigation  
17 issues. It seems like there is a factual question around  
18 the no wake signage, which I would appreciate documentary  
19 evidence to just establish what is really there; I have  
20 heard the characterizations of it.

21 With respect to the shorebird roost habitat, I would  
22 like to hear a response on that and also if there has been  
23 an effort to identify an alternative to the Cargill pond  
24 mitigation site.

25 MR. VICKERS: I'll make a preliminary comment about

1 documentation on the signage, no wake signage. In the  
2 administrative record in the Statement of Defense Westpoint  
3 Harbor submitted photographs of two of the three no wake  
4 signs that are at the entrance to the harbor. Honestly, I  
5 don't remember the exhibit number of that Statement of  
6 Defense but it is referenced in the Statement of Defense.

7 COMMITTEE MEMBER TECHEL: It's in one of those four  
8 binders.

9 COMMITTEE MEMBER GILMORE: Yes, one of the four  
10 binders.

11 MR. VICKERS: We produced quite a few documents. So in  
12 there there's photos of two of those three signs.

13 In today's permit, although you can't read it very well  
14 I think on these hard copies, but on the sign plan you will  
15 see the sign that says Westpoint Harbor Boat Launch. Again  
16 apologies, you can't read it on this version. But I assure  
17 you that it is the sign located near the boat launch. It  
18 specifies "no wake zone" it specifies "Greco Island  
19 sensitive area."

20 Regarding the buoy that's at the entrance to Westpoint  
21 Slough from Redwood Creek, I am 99 percent confident that  
22 there was as part of the Executive Director's administrative  
23 record a photo of that buoy attached to a letter that was  
24 submitted to BCDC staff some time ago, I believe in early  
25 2017. Again apologies, I don't know the actual



1 administrative record number of that exhibit but it is in  
2 there. The only thing that is missing is a photo of the  
3 third sign that's at the Westpoint Harbor entrance.

4 I don't know if regarding the shorebird roost habitat  
5 if you want to say something?

6 MR. ZEPPETELLO: I'll try to respond on the shorebird  
7 roost habitat issue. As I said, we reached out to Cargill  
8 in April and tried to get confirmation that they were  
9 managing Pond 10 in a way that would -- in the way that  
10 their memo from 2003 had indicated to provide shorebird  
11 roost habitat. The answer we got was, we're managing Pond  
12 10 for our own purposes and that memo was an agreement --  
13 that memo expressed what we were doing at the time. We  
14 pushed them further and asked them whether they would be  
15 willing to work with Mr. Sanders and come up with an  
16 agreement for managing Pond 10 going forward for birds and  
17 they basically said, no. Well, they emphatically said, no.

18 As I said in my remarks, we felt as staff that because  
19 it was envisioned in the permit that this was the mitigation  
20 site and because Mr. Sanders and Westpoint had relied on  
21 Cargill that it didn't seem equitable or appropriate to open  
22 up a whole other line of discussion about going out into the  
23 open market. My understanding from my years in private  
24 practice and it's a different issue but wetlands mitigation  
25 credit in the delta may be \$45,000 or \$50,000 an acre. We

1 just did not pursue that. That is something that  
2 theoretically could be pursued, it would -- but we didn't  
3 feel at the staff level that we should go there or that that  
4 would be, again, an equitable thing to do under the facts.

5 I think in the big picture, Cargill was saying  
6 Mr. Sanders and Westpoint should have pursued a memorandum  
7 of agreement and gotten a commitment in 2003. Maybe that's  
8 true. On the other hand, this is an example of a permit  
9 that had an obligation that on its face is not enforceable.  
10 You know, we can go back and say what should have been done  
11 in 2001. If this permit had had a time frame or a  
12 requirement that an agreement be worked out with Cargill and  
13 documented and submitted in six months or a year maybe we  
14 wouldn't be here. But the permit in terms of providing  
15 shorebird roost habitat at the adjacent site, it's not  
16 enforceable against Cargill.

17 And like I said, we didn't pursue the issue but it  
18 could be pursued of whether mitigation credit could be  
19 available on the market or whether a contribution to the  
20 salt ponds project or something like that, but we just did  
21 not go there in our discussions.

22 MR. VICKERS: If I may I'd like to add a point on that.

23 CHAIR SCHARFF: Go ahead.

24 MR. VICKERS: First, it's undisputed that the remainder  
25 of Pond 10 today is undeveloped as we speak and there is

1 roosting habitat there. Second, this is one of these places  
2 where there's details, and as I referenced earlier, we are  
3 not eye to eye on the same thing, we made a - what was my  
4 phrase - a concession to the shortness of life and some  
5 compromise. Frankly, I believe that there is no legal  
6 requirement for Westpoint Harbor to do anything more and it  
7 is backed by the fact that in 2003 the City of Redwood City,  
8 which was the lead agency under the California Environmental  
9 Quality Act doing the analysis of the potential impacts at  
10 Westpoint Harbor coordinated with Westpoint Harbor, Cargill,  
11 established that the remainder of Pond 10 would serve as  
12 roosting habitat and added an addendum to their mitigated  
13 negative declaration, the document that explains the  
14 environmental analysis, added an addendum to that at the  
15 beginning of 2004 that specified that the remainder of Pond  
16 10 would serve as roost habitat. And that if the remainder  
17 of Pond 10 were ever to be developed then a future  
18 developer, the person developing that remainder portion,  
19 would need to find mitigation for roost habitat.

20 Now, why is that important for BCDC? Not only does it  
21 establish that the agency looking at the environmental  
22 issues determined that the remainder of Pond 10 did satisfy  
23 the need for roost habitat but also Redwood City was the  
24 lead agency. If there was a dispute regarding the analysis  
25 the challenge to that dispute should have been brought in

1 2004, more than 14 years ago at this point. So frankly, any  
2 complaint about it is long, long past waived. Again to  
3 emphasize the reality on the ground, there shouldn't be a  
4 complaint about it because the remainder of Pond 10 hasn't  
5 been developed and it is serving as roost habitat.

6 If you'd like I have a copy of the staff report that  
7 Redwood City provided to their planning commission when the  
8 addendum to the mitigated negative declaration was made. In  
9 that staff report - again, this is to the Redwood City  
10 Planning Commission, an open government meeting - in that  
11 staff report staff clearly defines the reasoning behind the  
12 provision that says that if the remainder - excuse me - the  
13 provision that says that Cargill Pond 10 is continuing to  
14 function as a roost site and it shall be the responsibility  
15 of any future developer involved in the conversion to locate  
16 a new roost site. Staff provided the explanation of it and  
17 essentially said what I just told you, but I can give you a  
18 copy of it if you'd like, happy to do so.

19 COMMITTEE MEMBER RANCHOD (OFF MIC): When is that from?

20 MR. VICKERS: I'm sorry?

21 COMMITTEE MEMBER RANCHOD: Sorry. When is that staff  
22 report from?

23 MR. VICKERS: This is from January 20th, 2004, at the  
24 time that the addendum to the mitigated negative declaration  
25 was adopted by Redwood City.

1 COMMITTEE MEMBER RANCHOD: I think we have that.

2 CHAIR SCHARFF: Yes, I think we have that as well.

3 MR. VICKERS: Okay.

4 CHAIR SCHARFF: Anything further? Commissioner Techel.

5 COMMITTEE MEMBER TECHEL: Yes. When we started off we  
6 were talking, Commissioner Gilmore and I, about the binders  
7 that ended up at our door as we proceeded to have this  
8 hearing and I believe we got four very large binders. So  
9 when this was on the agenda again and I got a relatively  
10 small packet I was pleased and pleased to see that there was  
11 a negotiated settlement that was coming forward to us. I  
12 know it was a lot of work, there was a lot of materials, a  
13 lot of things to go over, but appreciated that.

14 As a Commissioner I look at the whole of the document.  
15 You're right, you can see that there was give and take in  
16 this document. But I think our goal is to bring people into  
17 compliance and not go through very long enforcement hearings  
18 and so appreciate that we found that sweet spot of  
19 compliance for us.

20 And there was a mention of credibility. I think I'm a  
21 credible commissioner if I don't get stuck in the weeds, if  
22 I take a reasonable approach, and I felt that the answers to  
23 the questions we had were well-answered and documented and I  
24 will be supporting this.

25 CHAIR SCHARFF: So I also would like to say thank you

1 to the parties for working this out. I know you guys put a  
2 lot of effort into it. I would also like to publicly thank  
3 Commissioner Pine for the role he played; I know he played a  
4 very constructive role in bringing the parties together with  
5 staff.

6 And when I also read this I also see that there was a  
7 lot of trying to problem-solve. I think the issue with  
8 putting the kayaks in the water not from the motorized area  
9 but then going off and creating a 25 foot area, I think  
10 that's a positive solution that provides access, allows the  
11 kayakers and non-motorized craft to go ahead and have a  
12 place to do it. And it will actually be an improvement, it  
13 will probably be easier for them to use that 25 foot than it  
14 would have been to go over and use the other area. So that  
15 seems like you guys have really tried to solve the  
16 particular problems that we had.

17 I think the two things that stand out we've talked a  
18 lot about which was the shorebird roost habitat mitigation.  
19 I'm still not quite clear in my mind so I'll probably come  
20 back to that. And then the signage issues. And I think  
21 what's confusing about the signage issues is we seem to have  
22 two different versions, not between staff and between  
23 Westpoint Harbor but I have Committee for Green Foothills  
24 saying that we don't have signage. We had another speaker  
25 from - was it the Audubon Society - they talked about it.

1 So I think that is still a little confusing as to why we  
2 don't really have an agreed upon set of facts. Can someone  
3 explain that or is it just -- I'm a little confused as to  
4 why the Committee for Green Foothills has a letter here that  
5 says we don't have it and you guys are like -- are we  
6 talking about something different or are we talking across  
7 purposes? I just don't really understand.

8 MR. VICKERS: I obviously cannot speak to what others  
9 have or have not observed, I can only speak to what I've  
10 observed, I can speak to what's in the administrative  
11 record. Again, if it would be helpful we can track down the  
12 number of the exhibit that shows the signage that's located  
13 at the entrance to Westpoint Slough, we can track down the  
14 administrative record exhibit that shows the buoy that's at  
15 the confluence of Redwood Creek and Westpoint Slough. Like  
16 I said, although it's kind of illegible, the sign at the  
17 boat launch is right here in front of you in these materials  
18 today.

19 I'll note the contractual obligations that are  
20 referenced and the rules of the harbor that designate --  
21 that specify that the slough is a no wake zone and require  
22 folks to follow that rule is also in the administrative  
23 record, it's a Statement of Defense. I happen to remember  
24 that one, believe it or not, it's 122, exhibit number 122.  
25 Which is -- frankly, it's available online on BCDC's

1 website. Again, I can't speak to others' observations.

2 CHAIR SCHARFF: That's fair enough. I guess I would  
3 just for the record say if other nonprofits or other groups  
4 believe that we are not posting the no wake signs I think it  
5 would be much more helpful to basically look at what  
6 Westpoint Harbor has said and what staff has said and  
7 identify clearly what the issue is and why -- Committee for  
8 Green Foothills wrote us that damage to fragile habitat by  
9 failing to post no wake signs will continue. That does not  
10 seem to be the facts before us from what you've said but if  
11 I'm misunderstanding that I think that it would be very  
12 helpful to explain exactly why.

13 When it comes to the full Commission, that's what I'm  
14 thinking. I'm thinking that, you know, if there are  
15 particular issues that people have I think it would be  
16 helpful to understand that at the full Commission and  
17 explain why that is. It just to me seems that there are the  
18 wake signs there and that you've come into compliance with  
19 that and staff seems to be telling us that. Therefore if  
20 it's not I'd like to understand why.

21 MR. ZEPPETELLO: Commissioner Scharff, I'd like to  
22 suggest, and I missed maybe part of the conversation, that  
23 we have Westpoint submit a series of photos post-dated from  
24 today to staff within two weeks, a week prior to the  
25 Commission hearing, so that we can have documentation of



1 what's out there.

2 CHAIR SCHARFF: Right. What I would hate us to have is  
3 a disagreement as to the facts. It's one thing to disagree  
4 over the interpretation, it's another thing to actually  
5 disagree on the actual facts, so I think it would be very  
6 helpful on that.

7 And then on the shorebird mitigation just so I  
8 understand this, if I have the facts wrong correct me. So  
9 when we did the original permit there was 2.3 acres of  
10 shorebird habitat that was lost; is that correct? Back when  
11 the original permit for Westpoint Harbor was done.

12 MR. VICKERS: That's correct. From the northern area  
13 of Pond 10. But again, the remainder of Pond 10 still  
14 provides shorebird roost habitat.

15 CHAIR SCHARFF: Right. But then the permit was saying  
16 in Special Condition II.F in a little - I'm just reading  
17 where it says that Westpoint Harbor:

18 "... shall provide mitigation for the 2.3  
19 acres of shorebird roost habitat lost as a result  
20 of this project with approximate 3.0 acres of  
21 replacement habitat with similar functions and  
22 benefits for shorebirds."

23 So this is the part where I get a little confused.  
24 Pond 10 already existed at that point, right? So what was  
25 the replacement for the 2.3 acres that were lost? That is

1 the part I've never -- and I understand that there was an  
2 agreement with Cargill but wasn't that already existing or  
3 was that not existing? That's the part I'm having trouble  
4 with.

5 MR. ZEPPETELLO: I'll comment. My understanding of  
6 this is that the remainder of Pond 10 existed but that there  
7 was -- what was intended here was something more. There is  
8 a difference between providing habitat and providing roost  
9 habitat because the roosting is an elevated area where they  
10 can be protected from predators.

11 And my understanding is that in the area where the  
12 marina is now located there formerly was roost habitat and  
13 so it was supposed to be recreated. And I read the Cargill  
14 memo as saying they would manage pond levels in the  
15 remainder of Pond 10 to provide that habitat, roost habitat,  
16 during whenever, the breeding season or the high water  
17 period. And what I think -- my view is that we are not, we  
18 have no assurance that Cargill is actually doing that. They  
19 said they were going to do that in 2003.

20 I would maybe respectfully disagree a little bit with  
21 Kevin. I think it's true there is habitat, there are a lot  
22 of birds that use the remainder of Pond 10, but whether  
23 shorebird roost habitat as envisioned in this condition is  
24 being provided, I don't think we have any basis to say that  
25 is the case.

1 CHAIR SCHARFF: So we don't know if it is being  
2 provided or not, is that?

3 MR. ZEPPETELLO: It is certainly not actively being  
4 provided by Cargill.

5 Go ahead, Kevin.

6 CHAIR SCHARFF: Yes, go ahead.

7 MR. VICKERS: So two things. One, under what I believe  
8 to be BCDC staff's interpretation, which correct me if I'm  
9 wrong, the point is that that Cargill promised that they  
10 would provide such in 2003.

11 CHAIR SCHARFF: Okay, so can I just ask why -- This is  
12 your permit. Did you buy this from Cargill and that's why?  
13 I mean, why is Cargill --

14 MR. VICKERS: It was discussed with Cargill and Cargill  
15 agreed to it.

16 CHAIR SCHARFF: But I mean, why did Cargill agree to  
17 it? Were they paid money for it? What was the reason  
18 Cargill would agree to this?

19 MR. VICKERS: In addition I'm going to hand some things  
20 out.

21 CHAIR SCHARFF: Okay.

22 MR. VICKERS: This is the staff report that I  
23 referenced earlier and this is an image that I printed out  
24 this morning. So again, this Google Earth image is what I  
25 printed this morning when I woke up a little too early. It

1 shows the entire Pond 10. I drew a very imprecise red line  
2 around the entire Pond 10. Approximately the top half  
3 obviously is Westpoint Harbor, the bottom half, what exists  
4 today. This was just the image that comes up when you type  
5 in Westpoint Harbor on Google Earth.

6       You can see here that water levels, while they vary  
7 based on rains, obviously, allow for large areas to be dry  
8 as well as other large areas to be shallow. You can see  
9 right through the water into features that are underneath  
10 the water, these trails of frankly the salt byproduct. This  
11 speaks to the reality out there today. To give you an idea  
12 of scale here, the marina basin is approximately 26.6 acres.  
13 So are these dry areas more than 3 acres? Obviously.

14       But in addition to that I think it's -- you know, I'm  
15 going to make this point again and this is where I think  
16 staff may disagree a little bit but there is no legal  
17 obligation to do any more than what Westpoint Harbor did.  
18 And if you flip over to this first tab on the staff report,  
19 this is, again, Redwood City, the lead agency under CEQA,  
20 charged under state law with doing the environmental  
21 analysis, determining what mitigation conditions are needed  
22 for potential impacts.

23       The lead agency determined that mitigation measure  
24 number 10 originally required the Applicant to provide a  
25 roosting site for the local bird population. At the time

1 that this mitigation measure was drafted - I'll note that  
2 was in 2001 - it was assumed that the remaining portion of  
3 Pond 10 would also be redeveloped in the very near future,  
4 which would eliminate the existing roosting area.

5       However, this situation has changed and the conversion  
6 of Pond 10 to another use is not anticipated. The existing  
7 condition of Pond 10 provides the necessary roosting site.  
8 Attachment 8 includes a letter from Cargill Salt Company  
9 acknowledging that Cargill is responsible for maintaining  
10 the roosting site. Again, that's the 2003 letter that  
11 Cargill wrote to Redwood City saying we will do this. The  
12 existing condition for fills mitigation measure 10: In the  
13 event that the remainder of Pond 10 is redeveloped Cargill  
14 will be responsible for addressing this issue at that time.

15       So there's two lines of argument here. Frankly, there  
16 is no legal obligation, in my opinion. BCDC staff's  
17 opinion, I think, is that the legal obligation that existed  
18 was satisfied.

19       CHAIR SCHARFF: So this is the part that I'm just  
20 confused on and it may just be my own confusion. You went  
21 through an EIR, you have the staff report which talks about  
22 this, but doesn't the BCDC permit itself have that language  
23 that just simply says -- does it say more than that, are we  
24 taking it out of context? I even looked at the exact part  
25 where it says:

1           Special Condition II.F states that Westpoint  
2       Harbor "shall provide mitigation for the 2.3 acres  
3       of shorebird roost habitat lost as a result of  
4       this project with approximately 3.0 acres of  
5       replacement habitat with similar functions and  
6       benefits for shorebirds."

7       And you're saying you fulfilled that permit obligation  
8   by doing what?

9       MR. VICKERS:   Having Cargill agree to provide that  
10   roosting habitat in Pond 10, in the remainder of Pond 10.

11       CHAIR SCHARFF:   But what I gather is that Cargill -- So  
12   that's the part that is confusing me and I guess that's --  
13   if Cargill agreed to do something which they didn't do,  
14   why -- why is that you fulfilling your obligation?   If you  
15   had an agreement with Cargill that was enforceable we  
16   wouldn't have the discussion, right?   But you don't.   So how  
17   do you fulfill an obligation by getting a letter from  
18   someone that says, I'll do something, and they don't have to  
19   do it?   That to me, that to me seems to be the crux of what  
20   seems to me to be where I can't connect the dots.   I'm  
21   really just asking you to help me.

22       And if not, what you have in the settlement agreement  
23   says you'll take our comments, you'll make a good faith  
24   effort to address it.   So my comment would be, it doesn't  
25   seem right that if we actually have lost 3 acres that you

1 don't go out -- if we lost 2.3 acres of roosting habitat.  
2 And if there is and Cargill is not providing that roosting  
3 habitat, then it seems to me that you should deal with the  
4 roosting habitat and go out and pay the money - it doesn't  
5 seem to be in the scheme of things - and solve that issue.  
6 That to me seems to be the comment I would make.

7 MR. DHILLON: I appreciate that comment. I think  
8 something that's unearthed from these comments is the  
9 history here is very complex and it spans a number of years.  
10 But this is really something that's driven by CEQA, which is  
11 a law that's designed to mitigate environmental impacts.  
12 And our position is the on the ground reality today if you  
13 were to go out to the marina, that there is habitat there  
14 that mitigates the impact that was contemplated many years  
15 ago. So that's point number one. I appreciate those  
16 comments just to --

17 CHAIR SCHARFF: So let me just stop there for a second.

18 MR. DHILLON: Sure.

19 CHAIR SCHARFF: That would be great and when we come to  
20 the Commission it would be great because staff has said they  
21 can't verify that. It would be very helpful for me if you  
22 actually came forward at the Commission and said, yeah,  
23 there's 3 acres, whatever it is, and it's right there on the  
24 ground and this is where the roosting habitat is.

25 MR. DHILLON: That can be easily done and I don't think

1 staff debates that point that we have the habitat there.

2 The other suggestion I would have, I would say we can  
3 all agree on this, the person in this room that knows the  
4 most about the site is Mr. Sanders, and if Mr. Sanders is  
5 willing to come up and provide some additional context on  
6 the history I think it may help give you all some comfort  
7 that why where we are today is completely appropriate just  
8 from a factual standpoint. And as Kevin has suggested and  
9 articulated as a legal matter, that the requirement has been  
10 met in full. And we have exchanged views with  
11 Mr. Zeppetello and staff. And at some point people can  
12 disagree on things but we think a reasonable compromise has  
13 been reached given the on the ground reality. I'll invite  
14 Mr. Sanders to address --

15 COMMITTEE MEMBER RANCHOD: Hold on.

16 CHAIR SCHARFF: Sure.

17 COMMITTEE MEMBER RANCHOD: I just want to put a finer  
18 point on Chair Scharff's point which is I am not -- I am  
19 stuck on this also which is that there is a requirement in  
20 an existing permit issued by this agency that we have in  
21 front of us for 2.3 acres of shorebird roost habitat --

22 CHAIR SCHARFF: Correct.

23 COMMITTEE MEMBER RANCHOD: -- that were to be lost as a  
24 result of the project. I understand that there is a complex  
25 history between what occurred in 2003 and today. I don't



1 need all the details about what conditions were there in  
2 2003 and what they are today. My understanding is that  
3 today we don't have an assurance that that mitigation is  
4 occurring or will occur in the future.

5 And the reason that I'm stuck on this is because in the  
6 Executive Director's Recommended Enforcement Decision, on  
7 page 7 it says that in this letter from June 2018 Cargill  
8 informed agency staff that among other things here Cargill  
9 never agreed to provide shorebird roost habitat in Pond 10  
10 and they are unable to provide any such mitigation in Pond  
11 10. That doesn't seem consistent with an assurance that  
12 this mitigation is occurring and will continue to occur in  
13 the future in a way that was contemplated at this point.

14 And this is part of a settlement agreement, as the  
15 members of the Committee are aware, as part of the  
16 settlement agreement. I'm just trying to find the language  
17 here. We have a general release and then we have a  
18 reservation of rights with respect to enforcement. So I am  
19 stuck on this because it is not clear to me that currently  
20 what is before us ensures that this mitigation will occur in  
21 the future.

22 MR. DHILLON: Sure. Let me try to do a better job of  
23 it. I do think it turns on the complex history here. Going  
24 back to 2004 the lead agency, Redwood City, which originally  
25 was responsible for evaluating the impacts and making sure

1 that there is proper mitigation - I just want to emphasize  
2 this point - had an addendum and I am going to read it to  
3 you all again.

4 "Since the Cargill Pond 10 is continuing to  
5 function as a roost site it shall be the  
6 responsibility of any future developer involved in  
7 the conversion of Pond 10 to another use to locate  
8 a new roost site."

9 So we have that in place. That statement in 2004,  
10 coupled with the fact that the on the ground reality is it  
11 is functioning as a roost site, so there is no loss of  
12 mitigation land right now, that in the future if that land  
13 were to be used for some other purpose, that as a condition  
14 of any development that future developer would be required  
15 to ensure that any loss of land there would be mitigated  
16 elsewhere. Let me pause there to see if you all follow  
17 that. I appreciate your concern is, is there a mitigation  
18 that was required that is not being provided? And the  
19 answer to that is, no, a resounding, no.

20 MR. VICKERS: Additionally, it's protective for the  
21 future going forward because if it is ever the case that the  
22 remainder of Pond 10 is developed, Redwood City will be  
23 involved, obviously, in that development and has done this  
24 environmental analysis and will be referring to the fact  
25 that they will require the future developer to locate a new

1 roost site.

2 COMMITTEE MEMBER RANCHOD: Clarification, that's a  
3 mitigated negative declaration from a long time ago. The  
4 permit condition and the obligation to ensure that the  
5 mitigation occurs is in this permit. It is not clear to me  
6 it is in another legally binding document on any party to  
7 ensure that it occurs. So if the hook to ensuring it occurs  
8 is in this permit and the proposed change to this part of  
9 the permit effectively relieves this agency and the  
10 permittee of ensuring this obligation be met in the future,  
11 as I read it, in part because Cargill is saying in their  
12 letter that they never agreed to do this and they are unable  
13 to provide it in Pond 10. So whether Pond 10 gets developed  
14 in the future or not, I don't see the hook to ensure that  
15 the mitigation that was required back in 2003 and assumed by  
16 the City would occur, will actually come to bear. Explain  
17 to me what I'm missing here.

18 MR. DHILLON: Two things are going to happen. Either  
19 that Pond 10, the remainder is going to remain undeveloped.  
20 If that's the case we have the habitat that we're talking  
21 about, no problem there.

22 COMMITTEE MEMBER RANCHOD: Okay, let me jump in then.

23 MR. DHILLON: Sure.

24 COMMITTEE MEMBER RANCHOD: Then why does Cargill say  
25 that they are unable to provide that mitigation?

1 MR. DHILLON: Cargill --

2 COMMITTEE MEMBER RANCHOD: In their letter.

3 MR. DHILLON: Yes. Cargill's lawyers wrote that  
4 letter. And as any landowner, doesn't - and I'm speculating  
5 here but as a lawyer I'll stretch a little bit - that they  
6 are uncomfortable taking certain legal positions because it  
7 may impact the future value of their land. Nothing more,  
8 nothing less. So I would suggest you all discount what  
9 Cargill's lawyers are saying and focus on the entitlement  
10 process. And what we have is the remainder of Pond 10 right  
11 now functioning as the habitat that we are all talking  
12 about, so there is no concern of a missing environmental  
13 protection. Which I think for all of us in the room is the  
14 most important piece.

15 The second scenario is someone wants to develop that  
16 remainder. If they want to develop that remainder they will  
17 have to go to Redwood City for an approval. Redwood City  
18 will pull out of its drawer this addendum from the original  
19 MND from 2004 and say, okay, if you want to develop this one  
20 of the conditions will be that you make up for the missing  
21 land here.

22 So those are the only two practical scenarios but  
23 whatever door you open it always leads to the place that we  
24 want to be in, which is there is not going to be a loss of  
25 the mitigation that is contemplated by this permit.

1 COMMITTEE MEMBER RANCHOD: I think I agree with your  
2 characterization of door two but I am not there on door one.

3 MR. ZEPPETELLO: I guess --

4 CHAIR SCHARFF: Commissioner Vasquez.

5 COMMITTEE MEMBER VASQUEZ: Go ahead, Marc.

6 MR. ZEPPETELLO: I guess I would just -- I am going to  
7 have to disagree with these guys to some extent. I think  
8 that it's true that Redwood City has accepted, by this  
9 addendum, that having Pond 10 function as it currently  
10 functions satisfied Redwood City, that's why they did the  
11 addendum. And I think it is also true that this condition  
12 is in our permit because it was lifted from the mitigated  
13 negative declaration.

14 But as an independent condition at this point I think  
15 staff's view is, given the letter from Cargill, the recent  
16 letter that repudiates what they said in 2003 -- what was  
17 said in 2003 was, we are going to do some active management  
18 to promote roosting habitat. And what they are saying in  
19 2018 is, we are going to operate Pond 10 however we feel we  
20 need to for our business reasons and it will remain -- it is  
21 going to remain a salt pond or a bittern pond in accordance  
22 with our operations, but we are not giving any assurance to  
23 anybody that we are managing it for birds.

24 The other part of this condition that wasn't met is  
25 that the habitat creation, there should be habitat creation

1 plans that were reviewed and approved; that has never  
2 happened.

3 I think that where staff was in the negotiations was if  
4 Cargill would live up to what they said, if they would  
5 reassure us that that's what they're doing, we would be  
6 satisfied and we could represent that -- again I will make  
7 the distinction between bird habitat and roost habitat as  
8 two different things.

9 So I think staff's view was, as said in the staff  
10 report, we don't really have the assurance that this  
11 condition has been met, but given the passage of time and  
12 that we are 14 years later and that the permit doesn't  
13 create a way that we can enforce against Cargill, that we  
14 were -- as I said, we didn't feel like we could require the  
15 applicant to go off-site, we amended Amendment 10 to say, no  
16 further obligation. But I can't sit here and say that we  
17 have the view that this has been fulfilled.

18 CHAIR SCHARFF: Commissioner Vasquez.

19 COMMITTEE MEMBER VASQUEZ: Yes, it got more confusing.

20 CHAIR SCHARFF: Do you mind if I make a follow-up?

21 COMMITTEE MEMBER VASQUEZ: Sure, go ahead.

22 CHAIR SCHARFF: The follow-up I wanted to make is, I  
23 always viewed this, and correct me if that's not staff's  
24 understanding, I always viewed our permit obligations as an  
25 ongoing obligation and so I don't actually understand when

1 we say that they fulfilled this obligation and so therefore  
2 we can't go after Cargill. It seems to me that the permit  
3 obligations are always ongoing. And if the permit  
4 obligations are always ongoing and something happens to make  
5 you out of compliance then don't you have to come into  
6 compliance by resolving the problem?

7 I think it's a little weird that they came into  
8 compliance with a letter from Cargill, frankly, that wasn't  
9 enforceable and we viewed that, so, for a time being. I  
10 mean, obviously I don't think there should be any fines or  
11 anything and I know we're beyond that. And that's how  
12 reliance comes into my mind. That if they relied on it to  
13 that stage there shouldn't be any penalties or anything for  
14 it but you should be in compliance with a permit on an  
15 ongoing obligation.

16 And so I really wanted to ask, Marc, if your view of  
17 our permits is that they create ongoing obligations and you  
18 need to be in compliance? It's almost as if you had a sign  
19 up one day and then the sign goes down. The fact that you  
20 had the sign up previously, what relevance does that have  
21 that you no longer have the sign up now?

22 MR. ZEPPETELLO: I think I agree with you that we would  
23 view it as an ongoing obligation, but the problem is they  
24 can't comply with the ongoing obligation because Cargill --

25 CHAIR SCHARFF: Well wait. But the ongoing obligation

1 seems to have nothing to do with Cargill. That's the part I  
2 can't -- the ongoing obligation is to come up with 3 acres  
3 of replacement habitat with similar function and benefits  
4 for shorebirds, so it could be off-site. I don't understand  
5 where it talks about Cargill, I don't see anything in the  
6 permit.

7 MR. ZEPPETELLO: In the Findings on page 49 and 50 of  
8 the permit, as I said in my presentation, it envisioned --  
9 the permit said this habitat will be created in the  
10 remainder of Pond 10 to the south. I could find it for you.

11 CHAIR SCHARFF: Yes, if you could, because that's the  
12 part I'm missing, that actually may make it --

13 MR. ZEPPETELLO: If you go to page 49 of the permit.

14 CHAIR SCHARFF: Okay.

15 MR. ZEPPETELLO: The second paragraph:

16 "... approximately 3.0 acres ... with similar  
17 functions and benefits ... will be created  
18 pursuant to plans approved ... on the remaining  
19 portions of the former bittern pond lying south of  
20 the project site or an approved alternate  
21 location."

22 And then on page 50 in the first partial paragraph in  
23 the middle it says:

24 "The permit does not contain a condition  
25 requiring the permittee to permanently guarantee



1 the ... habitat; Cargill will ..."

2 It has the same language that Kevin cited from the neg  
3 dec, essentially.

4 "... Cargill will have to provide additional  
5 or replacement mitigation for this habitat if it  
6 develops the adjacent salt pond."

7 So it appears contemplated that Pond 10 was where this  
8 was going to happen.

9 CHAIR SCHARFF: So what seems to me to be important for  
10 me is the language that says:

11 "The permit does not contain a condition  
12 requiring the permittee to permanently guarantee  
13 the shorebird roosting habitat ..."

14 Right? I mean, that's what we're saying.

15 MR. ZEPPETELLO: I think that was a legal guarantee, an  
16 open space or a public -- an open space guarantee. Because  
17 it was not on their land, it was on Cargill's land, it is on  
18 Cargill's land.

19 COMMITTEE MEMBER RANCHOD: Can I add some things, Chair  
20 Scharff?

21 CHAIR SCHARFF: Sure.

22 COMMITTEE MEMBER RANCHOD: I appreciate the challenge  
23 we have with where this parcel of land is and that Cargill  
24 controls it and so there are limits to what the permittee  
25 here could have done and can do at this point; and at the

1 same time there is still a real natural resource protection  
2 issue with respect to Bay resources that's within our  
3 jurisdiction. I appreciate there's a lot of hard work  
4 that's gone into this. We're focused on a couple of  
5 sentences in this massive agreement so I hope that folks  
6 appreciate that we're zeroing in on a particular aspect of  
7 this. There is so much in here that is very good and helps  
8 resolve very complex issues.

9       So in this little part that we are focused on now, if I  
10 look at other parts of the proposed settlement agreement  
11 there's some nice creativity that's gone into different  
12 aspects of this including directing financial resources to  
13 support work that's being done by other organizations to  
14 make sure that we have good benefits in the Bay. Perhaps  
15 the parties would benefit from some additional time to think  
16 about how we can creatively address this natural resource  
17 protection issue within the context of what has already been  
18 laid out here in a way that doesn't attempt to require  
19 something that is as a matter of fact impossible but also  
20 addresses the real resource issue.

21       And I have to say I am not at the point yet where I  
22 feel like given the facts before us and the obligations and  
23 lack of obligations, that I am at a point where I feel  
24 comfortable signing off on it yet.

25       MR. VICKERS: Can I focus on the part of the sentence

1 after the language about it doesn't contain a condition  
2 requiring the permittee to permanently guarantee the  
3 shorebird roost habitat. This is from the original text of  
4 the permit.

5 "... Cargill will have to provide additional  
6 or replacement mitigation for this habitat if it  
7 develops the adjacent salt pond."

8 The sentence evidences the fact that BCDC knew at the  
9 time, had in its mind, the conception that's also made clear  
10 in the staff report I passed out to you guys that the  
11 remainder of the pond provided the roost habitat that was  
12 needed. If and when it's ever filled up then that developer  
13 will need to address it. I don't think that there is a  
14 doubt. I mean, I think that this resolves any doubt that  
15 somehow BCDC was on a different page than Redwood City on  
16 that issue.

17 COMMITTEE MEMBER VASQUEZ: If I could?

18 CHAIR SCHARFF: Go ahead.

19 COMMITTEE MEMBER VASQUEZ: Do you believe that they  
20 were relying on that statement to ensure that that  
21 mitigation would occur because it was there already? So the  
22 assumption was if the pond was going to develop that was  
23 going to happen. Is that the reliance that you think you  
24 can rely on because the city was the lead and that's what  
25 they contemplated, that eventually you would get some

1 habitation out of that area, whether roosting or bird,  
2 whatever. I think what I hear from my fellow Commissioners  
3 is they're struggling where the assurance is. And so if we  
4 could craft a sentence that says, we all know that it's  
5 going to happen there, it's there already; how do we  
6 maintain it and how do we ensure that somewhere down in the  
7 future it stays there.

8 MR. VICKERS: I guess my point would be a little  
9 different, which is, that it's documented that BCDC at the  
10 time, and Redwood City at the time, understood that the  
11 guarantee for in perpetuity going forward was not on  
12 Westpoint Harbor's shoulders, it was on any potential future  
13 developer. Westpoint Harbor, any impacts that Westpoint  
14 Harbor had on roost habitat were not of a concern because  
15 the remainder of Pond 10 was not developed at that time.  
16 And BCDC and Redwood City, and other agencies frankly, made  
17 the -- the --

18 COMMITTEE MEMBER VASQUEZ: The finding.

19 MR. VICKERS: -- the determination that it was okay to  
20 take that load off of Westpoint Harbor's shoulders, that  
21 Westpoint Harbor wouldn't have to shoulder it going forward.  
22 I don't know, let's say 14 years, in the event that, I don't  
23 know, Cargill does something screwy like they may have done  
24 arguably in the last few months. That's what I think is an  
25 essential point that Commissioners should keep in mind, that

1 there is not -- again, in addition to the facts on the  
2 environmental reality there is a legal issue here and that  
3 is namely that it is not on Westpoint Harbor to guarantee  
4 this in perpetuity.

5 COMMITTEE MEMBER VASQUEZ: So how do we bind that  
6 agreement then to something or to someone?

7 MR. VICKERS: It will be addressed in the entitlement  
8 process if the remainder of Cargill 10 is ever developed.

9 COMMITTEE MEMBER VASQUEZ: And if it's never? If it's  
10 never then it's just what it is right now?

11 MR. VICKERS: Correct, I think that's correct.

12 MR. SANDERS: There is some information you guys need  
13 to have that I think will give you comfort and make us all  
14 realize we are kind of barking up the wrong tree here, if  
15 you can give me a couple of moments to explain what really  
16 happened.

17 CHAIR SCHARFF: Go ahead.

18 MR. SANDERS: So let me tell you about what the roost  
19 habitat really was. If you look at the drawing that you  
20 have in front of you, in the 1800s where Pacific Shores  
21 Center is was a cement factory that made cement from oyster  
22 shells and Bay mud, the only one in California that did  
23 that. And as part of their process, slurry flowed west to  
24 east into what is now the northwest corner of Westpoint  
25 Harbor and so there was an island about 3 acres, 2.5, and it

1 was only about two inches higher than the rest of the pond,  
2 the pond was very flat.

3 But what would happen is at certain times of the year  
4 when migratory birds and shorebirds are feeding on the mud  
5 flats out here, which is where they normally feed, at high  
6 tide they would go to the roost island and roost there  
7 because critters couldn't get to them, raccoons and fox and  
8 skunks and stuff like that that are all along the levees  
9 throughout this area. It was a safe area for the shorebirds  
10 who were feeding in the channel most of the time at high  
11 tide to go and rest someplace.

12 And so one of the conditions of the environmental  
13 review - there were five environmental reviews on Pacific  
14 Shores and Westpoint Harbor - was, this roost island is  
15 really important for these birds because the feeding area  
16 around here is quite large to recreate it at another place.  
17 So that's -- the reason for the island, why a small island  
18 was so important and there are millions of birds on them.

19 Now, if you look at the remaining part of Pond 10, it's  
20 60 acres. One of the things they do when they maintain  
21 these ponds is they bring a dredge - they break the levee,  
22 bring in a dredge in through what's called a dredge lock -  
23 and they build up the levee two or three feet every two or  
24 three years. And they borrow the mud from the inside of the  
25 pond and build the levees. So all Leslie - now Cargill -

1 ponds have what's called a borrow ditch, which is about a 20  
2 foot wide ditch about 5 feet deep that's always full of  
3 water that goes all around the inside of the levee. So we  
4 have in the remainder of Pond 10 a borrow ditch that goes  
5 all the way around which makes the entirety an island.

6       So that's why by doing nothing Cargill said -- and at  
7 the time the person with the idea for the roost island was  
8 Clyde Morris from Fish and Wildlife and Bob Douglas was the  
9 land manager. They said, 'Look, we can recreate it here.  
10 We'll just leave that the way it is.' Which they have done  
11 for 18 years now. By benign neglect we've got actually a 60  
12 acre roost pond and it's always been that way. And there is  
13 no water coming in, no water coming out, it's ephemeral just  
14 like the pond was originally. And so at the time that you  
15 really need the roost habitat, we've had a few rains and the  
16 entirety is an island, that's why there's millions of birds,  
17 far more than there ever was before.

18       Now as to why Cargill, which large private company, a  
19 bunch of attorneys in Minneapolis, chose to not acknowledge  
20 that, there are letters and letters. You have a letter from  
21 the now-retired Bob Douglas confirming, yes, we did agree to  
22 this. And this was all done as part of the CEQA process  
23 before the BCDC permit. I recall there was a ten-year  
24 period where my permit was not accepted as complete. So  
25 this all was done afterwards.

1           Then somebody said, 'What about if Cargill develops  
2 this?' because there was a big plan for Cargill to develop  
3 the whole thing. Cargill wrote another letter saying,  
4 'Well, if we have to develop this we will recreate that  
5 roost pond someplace else.' And I'm sure they will, they  
6 have 1,400 more acres there. But that's in writing. This  
7 took months and months and months, it wasn't just an email  
8 from one or two people. So the good news is the roost  
9 habitat which was 3 acres is now 60 acres. Every year it's  
10 the same, it's been there, Cargill did agree to it.

11           And the CEQA people - and BCDC participated - said,  
12 look, Sanders actually has no way to do this. The only  
13 person that owns any salt ponds near this roost area is  
14 Cargill so they're the only ones that could do it, which is  
15 why the permit says it's not on Sanders, it's on Cargill.

16           So that's the true story; declare victory because we  
17 have victory.

18           CHAIR SCHARFF: All right. Commissioner Gilmore.

19           COMMITTEE MEMBER GILMORE: Okay. I thank you for that  
20 brief history. So here is my comment. It seems like at the  
21 time of the environmental review all of the parties  
22 contemplated that the remainder of Pond 10 was going to be  
23 the roosting site; right? I think there's agreement about  
24 that. And I think if you look further into the record it  
25 says, okay, we're doing this because we don't think this is



1 going to be developed and basically the fact that we lost 3  
2 acres is not a big deal because we have all of the rest of  
3 this land here. But in the event that Pond 10 is subject to  
4 development then we are going to have to make up for this  
5 lost habitat; right?

6 And the fact that the land is owned by Cargill, I agree  
7 with staff, I think it's very difficult to hold the marina  
8 owners responsible for this habitat. Because whether or not  
9 they relied on what Cargill was saying at the time, the  
10 point is everybody thought that this particular piece of  
11 property would be the mitigation. And the fact that Cargill  
12 didn't -- well, we don't know quite what they did. But the  
13 fact that Cargill is disavowing any responsibility now 18  
14 years later, when the marina operators and owner have relied  
15 on and what everybody else thought was going to be at the  
16 same time, I agree with staff, I don't think it's fair that  
17 we hold them responsible for something that they cannot  
18 control because at no point in time was it ever contemplated  
19 that the roosting site would be somewhere else, okay. That  
20 somewhere else only comes into play if this Pond 10 is  
21 developed.

22 CHAIR SCHARFF: That was a good summary.

23 COMMITTEE MEMBER GILMORE: Thank you.

24 COMMITTEE MEMBER TECHEL: It was.

25 CHAIR SCHARFF: So on another topic, unless we --

1 COMMITTEE MEMBER TECHEL: No, I would just say, hearing  
2 that the area is full of birds leads me to believe that  
3 there's been no harm done by this project and, in fact, it  
4 is still a roosting habitat.

5 COMMITTEE MEMBER RANCHOD: I'll add one last thought  
6 which is, I appreciate the history, Mr. Sanders, that helps  
7 understand how we got to where we are. I understand that if  
8 this was -- this parcel was developed there's a hook to  
9 ensure that this mitigation is traded elsewhere.

10 It's still not clear to me that the habitat that is  
11 currently existing in Pond 10 is in fact shorebird roost  
12 habitat as opposed to general bird habitat and that if this  
13 parcel is not actually developed but that it's handled or  
14 managed in a way by Cargill that doesn't actually ensure  
15 shorebird roost habitat that the natural resource issue has  
16 been addressed, or that it has been addressed in a way that  
17 we can be assured is satisfactory given the environmental  
18 natural resource value of that aspect of this site and of  
19 the permit conditions. I still have a concern about this  
20 but I understand it is a helpful characterization of where  
21 we are.

22 CHAIR SCHARFF: I think what I heard you say was that  
23 it is shorebird roost habitat and that that's not a factual  
24 dispute. So I think it would be helpful when we come to the  
25 Commission if you could provide evidence that clarifies that

1 this is shorebird roost habitat. Because if it is shorebird  
2 roost habitat I think that does make a difference and that  
3 the only way that shorebird roost habitat goes away - I  
4 guess it's two things - is if they redevelop the property.  
5 That's what we'd like to know. And I guess it would be  
6 helpful if you could address the issue of could Cargill  
7 manage this project in a realistic on the ground way that  
8 they would do where they would manage it by, I guess it's  
9 raising the water levels, right, which would then get rid of  
10 the shorebird habitat. And if you can go back and say, you  
11 know, in the last ten years or whatever that's not happened.  
12 I think that would go a long way to saying, yes, it's  
13 shorebird roost habitat and the only way it's really going  
14 away from a practical point of view is if Cargill  
15 redeveloped the site. Okay, Commissioner Gilmore.

16 COMMITTEE MEMBER GILMORE: Okay. So my comment about  
17 all of this is it would be helpful to get the information  
18 about the roost habitat but I am going to caution my  
19 commissioners. If the information comes back and it is not  
20 shorebird roost habitat we're still back at the same  
21 position. Where I feel like this piece of property was  
22 always contemplated to be the habitat and it kind of is what  
23 it is because it was never contemplated that Westpoint go  
24 look for roosting habitat outside this property. The only  
25 time that would happen is if and when the property became

1 developed.

2 And I share your discomfort at the potential of not  
3 being able to guarantee this in perpetuity, but we can't  
4 because we don't have any contractual obligation over  
5 Cargill and they are the owners of this piece of property.  
6 I just want to say I am there with you on the future and I  
7 sort of feel like if this parcel is to be developed then we  
8 have to rely on Redwood City as the lead agency to enforce  
9 their conditions.

10 CHAIR SCHARFF: So I think I'm closer to Commissioner  
11 Ranchod on this in that if it is roosting habitat and it has  
12 been roosting habitat for the last ten years, it hasn't  
13 changed, I don't have a problem. However, if it is not  
14 roosting habitat, and you've assured me it is, frankly, and  
15 if it's not roosting habitat and it comes back and it shows  
16 that it's not, then I do think you should come up with a  
17 creative solution that says, hey, we're going to provide  
18 off-site roosting habitat. And that probably is paying  
19 money. But if it is roosting habitat and it has been  
20 roosting habitat then I actually don't have a problem with  
21 it, I think you fulfilled the obligation.

22 MR. DHILLON: I appreciate all those comments and I'm  
23 glad that we're focusing on the important piece which is  
24 that we have habitat there that is mitigating the impact  
25 that everyone contemplated. And I echo Commissioner

1 Gilmore's observations that we are where we are in 2018.

2 And while we've been having what I'll describe as the more  
3 substantive conversation, which is really important, just to  
4 zoom out for a second.

5 Westpoint Harbor as the permittee here has been  
6 operating for a long time. Staff has taken the position  
7 that the permittee had reason to rely upon Cargill. I don't  
8 want to make this too legalese but I think it's a very  
9 important point that at the end of the day, reduced down,  
10 this permit is a contract. And all of us can appreciate  
11 that a number of contractual provisions over time can cease  
12 to be enforceable for a great number of reasons,  
13 impossibility, changed circumstance, waiver.

14 So from a very technical standpoint our view is that we  
15 have done all that was required underneath this permit,  
16 point number one, but the more important point is that there  
17 is no negative impact as a matter of fact because we have  
18 habitat there and the most likely outcome, if we can all  
19 agree, that if that pond, that remainder were to be  
20 developed, that Redwood City would require as a condition of  
21 future development that there be mitigation. So I just urge  
22 you all to consider that while we have been pivoting around  
23 solutions and the like we do have a very firm legal position  
24 which we think is very -- we think it is persuasive and we  
25 think the law fully supports it.

1 CHAIR SCHARFF: I understand that. I also think though  
2 that in your settlement agreement, which you are asking us  
3 to approve today, it says that if we have concerns that you  
4 will in good faith look at it. And I think part of your  
5 good faith obligations are to come back to us and back up  
6 what you represented, which is, this is roosting habitat and  
7 I shouldn't worry about it. Because if it is roosting  
8 habitat I have no issue. The issue is if it is not roosting  
9 habitat. Then I think -- you've made representations that  
10 it is; then I think you should come up with a creative  
11 solution to give us some comfort. That's really all I --  
12 that's my position, I think Commissioner Gilmore's position  
13 is slightly different, but that's --

14 MR. DHILLON: Commissioner, I hear your comments and  
15 respectfully just to give a little push back to that. We  
16 are happy to discharge any obligations that we have to talk  
17 in good faith but this is a particular issue that staff is  
18 very familiar with, we are very familiar with, we've talked  
19 about this ad nauseam and we have tried very, very hard to  
20 come to a place that we think is fair, equitable, but most  
21 importantly that the key issue behind the permit condition  
22 itself, that we protect a natural resource. That's been  
23 happening for nearly 20 years now and I think that those are  
24 the key facts for you all to consider when deciding whether  
25 to support this settlement.

1 CHAIR SCHARFF: Good ahead, Commissioner Gilmore.

2 COMMITTEE MEMBER GILMORE: Okay, I hear what you just  
3 said and I just want to clarify something. So based on that  
4 statement does that mean that you are not going to come back  
5 with proof of whether or not this is a roosting habitat or  
6 not? I wasn't sure if that's what I should glean from that  
7 statement.

8 MR. DHILLON: No, I was responding to a suggestion that  
9 perhaps the recommendation would be that we make  
10 modifications to the settlement agreement as drafted. I  
11 would caution against that only because we have worked so  
12 hard to get here and thought very thoughtfully about this  
13 particular condition. We are prepared to address -- you  
14 guys have made a number of comments about providing  
15 photographs of signage and things like that. We have this  
16 in mind and we are prepared to present this to the  
17 Commission whenever that hearing is set.

18 COMMITTEE MEMBER GILMORE: My follow-up comment is, I  
19 think what you're hearing, at least from the Chair, is that  
20 if you come back and show that there is roosting habitat  
21 then we're okay and it might be premature at this point to  
22 talk about changing the conditions of the settlement  
23 agreement.

24 MR. DHILLON: We're on the exact same page.

25 COMMITTEE MEMBER GILMORE: Okay, cool.

1 CHAIR SCHARFF: That was my position. My concern was,  
2 not to put too fine a -- I feel like I'm beating a dead  
3 horse. It was simply that you made representations that,  
4 hey, there's roosting habitat out there, and we said, okay,  
5 bring proof, we're done with this issue, don't worry about  
6 it, and now I feel like you're backing away from that.  
7 Well, if it's not roosting habitat.

8 MR. DHILLON: Forgive me, I wasn't backing away from  
9 it. I perceived your position as being a little bit more  
10 nuanced than that and just wanted to clarify what our  
11 positions are on this issue.

12 CHAIR SCHARFF: Okay, fair enough. I had one other  
13 minor issue that I wanted to bring up. When I read the  
14 settlement agreement I just wanted to know, when you do your  
15 1542 release and you waive claims against each other you're  
16 not waiving future claims obviously. What date do the  
17 claims -- because it doesn't say 'through execution.' Is it  
18 execution of the settlement agreement by both parties, is  
19 that the date that we're waiving claims?

20 MR. DHILLON (OFF MIC): It would be the effective date,  
21 so that would be the date that ultimately the Commission  
22 endorses or approves its settlement agreement.

23 THE REPORTER: Use your microphone, please.

24 MR. DHILLON: It would be the effective date.

25 CHAIR SCHARFF: Okay.



1           MR. DHILLON: Which would be the date that it's  
2 ultimately approved by both parties.

3           CHAIR SCHARFF: Good. That was my understanding, it  
4 just didn't say that in the agreement, so we can just go on  
5 the record that it's our understanding it would be the  
6 effective date. Okay, fair enough.

7           COMMITTEE MEMBER VASQUEZ: Not to continue this but --  
8 and maybe Mr. Sanders can answer this better. In the  
9 environmental document when they first did this did they  
10 recognize that area as being habitat already? Because I'm  
11 having trouble figuring out why they wouldn't have had you  
12 replace that 3 acres immediately for that project. So was  
13 it already recognized as being a roosting area?

14          MR. SANDERS: Yes. Most salt ponds are flat as a  
15 pancake. This pond was what's called a multipurpose pond  
16 and so it has higher - Pond 10 - it has higher parts and  
17 lower parts. It was never in Williamson Act. It was quite  
18 a different kind of pond and so it naturally has islands  
19 that are 10, 15 acres. And when I say 'islands,' they're  
20 only two or three inches higher, exactly like the original  
21 roost habitat is. And so the proof of roost habitat is  
22 seeing thousands of birds out there when it's dry. It's  
23 almost never completely dry, even now it has some spots of  
24 water. But the most important thing is it does have this  
25 sort of moat around it, which is the borrow ditch. There

1 are today shorebirds out there every single day and of  
2 course they go, they fly right over to the mud flats when in  
3 low tide.

4 So that was always recognized. This actually all came  
5 from a note from Clyde Morris. He said, this island is  
6 pretty easy to spot because it was pure white because it was  
7 old concrete so he wanted to make sure an island like that  
8 was replicated. Cargill said, 'We've got lots of them in  
9 the remainder of Pond 10 and so we'll just leave it the way  
10 it is' and that's what happened.

11 COMMITTEE MEMBER VASQUEZ: So it would be helpful if  
12 somewhere in that original environmental document they said  
13 something about that.

14 MR. SANDERS: We provided quite a bit of correspondence  
15 from that period but it was a pretty back and forth -- there  
16 were people meeting all the time.

17 COMMITTEE MEMBER VASQUEZ: That it was identified as a  
18 roosting area and that's why you didn't have -- the project  
19 didn't have to replace that island immediately.

20 MR. VICKERS: Well, it is. This is in, again, the  
21 document I passed out. The existing condition of Pond 10  
22 provides the necessary roosting site.

23 COMMITTEE MEMBER VASQUEZ: Okay.

24 MR. VICKERS: That's why they allowed it to go forward  
25 this way because the remainder of Pond 10 was for shorebird

1 roosting.

2 CHAIR SCHARFF: All right.

3 COMMITTEE MEMBER VASQUEZ: So the tide of those 3 acres  
4 was that in case something happened there was assurance that  
5 3 acres was going to be developed there, I guess. That  
6 would be my train of thinking is that if anything happened  
7 there we wanted to make sure there was going to be 3 acres  
8 of roosting habitat, although there was already roosting  
9 habitat there.

10 MR. VICKERS: Correct, for the future development --

11 COMMISSIONER VASQUEZ: For the future, yes.

12 MR. VICKERS: -- to replace that, the roosting habitat,  
13 in the remainder of Pond 10.

14 CHAIR SCHARFF: All right, does anyone else have  
15 anything further to add?

16 COMMITTEE MEMBER TECHEL: I'm ready to make a motion.

17 CHAIR SCHARFF: Go ahead, make a motion.

18 MR. ZEPPETELLO: Excuse me, before you make the motion  
19 could I just make a comment on a procedural matter, I guess.

20 CHAIR SCHARFF: Sure.

21 MR. ZEPPETELLO: There have been comments about  
22 providing some further information prior to the Commission  
23 meeting, but we have also got a constraint that there  
24 shouldn't be additional evidence at the Commission meeting.  
25 And we've also got the issue that what's before you is

1 actually the settlement agreement and we're talking about  
2 issues related to Pond 10, which is part of the -- and the  
3 channel markers which are related to the permit amendment  
4 that is already in effect, which the agreement says you're  
5 free to submit comments on.

6       So I guess what I'd like to suggest is that Westpoint  
7 Harbor provide the information responsive to questions to  
8 staff prior to the Commission meeting. We can make a report  
9 at the Commission meeting. If ultimately it is the  
10 Commissioners that are raising concerns about some of these  
11 issues at the Commission meeting that then perhaps we be  
12 directed to come back to the Enforcement Committee in three  
13 months or something and talk about this further, but that  
14 none of this really needs -- it doesn't really tie into  
15 voting on the settlement agreement.

16       CHAIR SCHARFF: Okay, fair enough, I think the notion  
17 of doing a report is a good one. I think my goal here in  
18 getting the information is to anticipate concerns  
19 Commissioners may have, frankly, so that we don't do this at  
20 the Commission level.

21       COMMITTEE MEMBER TECHEL: Right.

22       CHAIR SCHARFF: I especially think on the signage, for  
23 instance, that it's very helpful to say, here are the actual  
24 signs and that, you know, somebody is under a  
25 misapprehension somewhere because the signage is actually

1 there.

2 COMMITTEE MEMBER VASQUEZ: You're giving them fair  
3 warning to anticipate a question.

4 CHAIR SCHARFF: Right. I think we want -- when we go  
5 to the Commission on this we want the issues to be put to  
6 bed. I think you guys -- and I think someone said, 'We  
7 don't want to get lost in the weeds here right now.' I  
8 think the big thing is you guys have done a good job, you've  
9 come up with an agreement that makes sense and there are a  
10 few key issues that need a little clarification. I think  
11 that you can provide that information to staff, staff can  
12 then bring it to the full Commission, right? Or bring it  
13 back to us or whatever.

14 MR. ZEPPETELLO: We could certainly provide a report as  
15 part of the presentation at the Commission hearing and then  
16 if there are concerns that are not resolved we bring it back  
17 to the Enforcement Committee for further discussion.

18 CHAIR SCHARFF: My goal is to avoid that, frankly.

19 MR. ZEPPETELLO: Yes, I think so.

20 CHAIR SCHARFF: That's my goal. That's our goal.

21 MR. DHILLON: Just to clarify, Marc, I didn't  
22 appreciate exactly what procedure you are proposing here.  
23 Our view is that you all have enough information to make a  
24 recommendation up or down on this and I hope that's what  
25 we're talking about. I would hate to have a circumstance

1 where this is all delayed for many months or weeks because  
2 of what I would describe as somewhat technical issues that  
3 can be addressed in due course before the full Commission.

4 CHAIR SCHARFF: Well that's the goal is to have it  
5 before the full Commission. Look, I am not sure I agree  
6 completely. You're asking us to vote on a settlement  
7 agreement. The settlement agreement actually says that we  
8 are supposed to give comments if we wish to regarding --  
9 that's the way I interpret it.

10 MR. DHILLON: Just let me clarify that piece there.  
11 That is if the Commission were to say that we would like  
12 some issues to be addressed, that is for the Commission to  
13 decide. At this juncture, as I understand the agreement and  
14 the process that we agreed to, that you all would look at  
15 the settlement agreement, make a recommendation as to  
16 whether it should be approved by the full Commission. And  
17 it's at that juncture, the full Commission, would --

18 CHAIR SCHARFF: So let me just read the settlement  
19 agreement to you.

20 MR. DHILLON: Sure.

21 CHAIR SCHARFF: This is your settlement agreement. It  
22 says: "In the event that the Enforcement Committee or  
23 Commission ..." that's us, the Enforcement Committee or  
24 Commission "... provide comments or recommendations ..."

25 I believe we have provided comments and the comments

1 are, go get us that information. Or recommendations. I  
2 mean, I could put it in a motion as a recommendation, right?

3 "... that it believes should be addressed by  
4 and/or incorporated into the Permit ..."

5 We haven't asked that anything be incorporated into the  
6 permit. We've made comments at this point, get us the  
7 information. I don't see why that, given that's before us,  
8 and that's in the settlement agreement, why that is a  
9 problem.

10 MR. ZEPPETELLO: No, I don't think it's a problem.

11 COMMITTEE MEMBER TECHEL: I'm ready for a motion.

12 COMMITTEE MEMBER GILMORE: I'm going to make this  
13 really quick. I think that you should take the Chair's  
14 comment about anticipating issues with our full colleagues  
15 very, very seriously. Because we've spent a lot of time  
16 working with our colleagues and I think we are pretty good  
17 about anticipating the kinds of questions that they're going  
18 to have. If we have those kind of questions you could  
19 almost bet that they're going to have those kind of  
20 questions too. So this is actually a way of getting us to  
21 where we all want to be and trying to help you guys out.  
22 Because, believe me, we don't want this coming back to the  
23 Enforcement Committee.

24 CHAIR SCHARFF: I agree. Do you want to make a motion?

25 COMMITTEE MEMBER TECHEL: I do. I want to make a

1 motion that we accept the proposed settlement agreement  
2 between the Commission and Westpoint Harbor.

3 COMMITTEE MEMBER VASQUEZ: Second.

4 CHAIR SCHARFF: I would suggest that you modify it to  
5 that we don't accept, that we recommend to the full  
6 Commission.

7 MR. ALDERSON: Sorry, may I make a point here?

8 CHAIR SCHARFF: Sure.

9 MR. ALDERSON: Your motion should be that this is a  
10 recommendation from the Enforcement Committee that the  
11 Commission accept the settlement agreement. The settlement  
12 agreement is -- normally the Enforcement Committee provides  
13 the recommendation of an enforcement decision, here you are  
14 providing a recommendation of the settlement agreement which  
15 resolves the enforcement action.

16 COMMITTEE MEMBER TECHEL: Okay, that's what I said.

17 COMMITTEE MEMBER VASQUEZ: And that's what I second.

18 CHAIR SCHARFF: All right, great. Okay. Any  
19 conversation on it or all in favor?

20 COMMITTEE MEMBER RANCHOD: Was there a second?

21 CHAIR SCHARFF: Yes, there was a second.

22 COMMITTEE MEMBER RANCHOD: I just want to say before we  
23 vote. There are a couple of factual details here that are  
24 on a discrete issue that are very important to me on being  
25 able to support this and I hope that I can support this at



1 the full Commission. I would like for myself clarification  
2 of those details before being asked to support it and that's  
3 where I am. I appreciate the Chair's guidance and comments  
4 and I am sure the parties will take that into account.

5 And I want to say that I appreciate so much work and  
6 time that has gone into getting to this point and resolving  
7 really complex and difficult issues, so I appreciate all the  
8 work that you have been doing and are continuing to do.

9 CHAIR SCHARFF: All right. All in favor of the motion?

10 (Ayes.)

11 CHAIR SCHARFF: And that passes unanimously.

12 COMMITTEE MEMBER RANCHOD: I am abstaining.

13 CHAIR SCHARFF: Oh, you're abstaining?

14 COMMITTEE MEMBER RANCHOD: I'm abstaining.

15 CHAIR SCHARFF: All right.

16 So that brings us to, I believe, do we have a  
17 possible --

18 MR. McCREA: Mr. Chair?

19 CHAIR SCHARFF: Yes.

20 MR. McCREA: Our legal counsel is suggesting a roll  
21 call on the last vote.

22 CHAIR SCHARFF: Okay, let's do a roll call vote.

23 MR. KALRA: Chair Scharff?

24 CHAIR SCHARFF: Yes.

25 MR. KALRA: Commissioner Ranchod?

1 COMMITTEE MEMBER RANCHOD: Abstain.

2 MR. KALRA: Commissioner Techel?

3 COMMITTEE MEMBER TECHEL: Aye.

4 MR. KALRA: Commissioner Gilmore?

5 COMMITTEE MEMBER GILMORE: Yes.

6 MR. KALRA: Commissioner Vasquez?

7 COMMITTEE MEMBER VASQUEZ: Yes.

8 CHAIR SCHARFF: All right. That passes, 4 with 1  
9 abstention.

10 MR. McCREA: Thank you very much, Mr. Chair.

11 The next item, Item 7, we respectfully request that we  
12 postpone that until our next committee meeting.

13 CHAIR SCHARFF: Okay, accepted.

14 All right, great. With that we'll adjourn.

15 (Thereupon, the Enforcement Committee  
16 meeting was adjourned at 3:55 p.m.)

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## 1 CERTIFICATE OF REPORTER

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3 I, Ramona Cota, an Electronic Reporter and Transcriber,  
4 do hereby certify that I am a disinterested person herein;  
5 that I recorded the foregoing San Francisco Bay Conservation  
6 and Development Commission, Enforcement Committee Meeting  
7 and thereafter transcribed it.

8 I further certify that I am not of counsel or attorney  
9 for any of the parties to said meeting, nor in any way  
10 interested in the outcome of said matter.

11 IN WITNESS WHEREOF, I have hereunto set my hand this  
12 21st day of November, 2018.

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RAMONA COTA, CERT\*\*478

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